Congressional Record

SEVENTY-FIFTH CONGRESS, THIRD SESSION

SENATE

WEDNESDAY, JUNE 8, 1938

(Legislative day of Tuesday, June 7, 1938)

The Senate met at 12 o'clock meridian, on the expiration of the recess.

THE JOURNAL

On request of Mr. BARKLEY, and by unanimous consent, the reading of the Journal of the proceedings of the calendar day Tuesday, June 7, 1938, was dispensed with, and the Journal was approved.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Calloway, one of its reading clerks, announced that the House had disagreed to the amendment of the Senate to the bill (H. R. 1872) for the relief of Martin Bridges, asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. KENNEDY of Maryland, Mr. COFFEE of Washington, and Mr. CARLSON were appointed managers on the part of the House at the conference.

The message also announced that the House had disagreed to the amendment of the Senate to the bill (H. R. 5743) for the relief of Haffenreffer & Co., Inc., asked a conference with the Senate on the disagreeing votes of the two Houses thereon, and that Mr. KENNEDY of Maryland, Mr. COFFEE of Washington, and Mr. CARLSON were appointed managers on the part of the House.

The message further announced that the House had agreed to a concurrent resolution (H. Con. Res. 53) providing for the appointment of a committee of Senators and Representatives to participate in the one hundredth anniversary of the birth of the late John Hay, and for other purposes, in which it requested the concurrence of the Senate.

ENROLLED BILLS AND JOINT RESOLUTIONS SIGNED

The message also announced that the Speaker had affixed his signature to the following enrolled bills and joint resolutions, and they were signed by the Vice President:

S. 821. An act for the relief of Lawson N. Dick;

S. 1220. An act for the relief of Josephine Russell;

S. 1340. An act for the relief of A. D. Weikert;

S. 1694. An act authorizing the Secretary of War to convey to the town of Montgomery, W. Va., a certain tract of land;

S. 2023. An act for the relief of Charles A. Rife;

S. 2368. An act to provide funds for cooperation with School District No. 2, Mason County, State of Washington, in the construction of a public-school building to be available to both white and Indian children;

S. 2409. An act for the relief of certain officers of the United States Navy and the United States Marine Corps;

S. 2655. An act for the relief of Lt. T. L. Bartlett;

S. 2709. An act for the relief of Mr. and Mrs. Joseph Konderish;

S. 2742. An act for the relief of Mrs. C. Doorn;

S. 2956. An act for the relief of Orville D. Davis;

S. 2979. An act for the relief of Glenn Morrow;

S. 2985. An act for the relief of John F. Fahey, United States Marine Corps, retired;

S. 3040. An act for the relief of Herman F. Krafft;

S. 3095. An act authorizing the Secretary of War to grant to the Coos County Court of Coquille, Oreg., and the State of Oregon an easement with respect to certain lands for highway purposes;

S. 3126. An act authorizing the Secretary of War to convey a certain parcel of land in Tillamook County, Oreg., to the State of Oregon to be used for highway purposes;

S. 3166. An act to amend section 2139 of the Revised Statutes, as amended;

S. 3188. An act for the relief of the Ouachita National Bank of Monroe, La.; the Milner-Fuller, Inc., Monroe, La.; estate of John C. Bass, of Lake Providence, La.; Richard Bell, of Lake Providence, La.; and Mrs. Cluren Surles, of Lake Providence, La.;

S. 3209. An act authorizing the Secretary of War to grant an easement to the city of Highwood, Lake County, Ill., in and over certain portions of the Fort Sheridan Military Reservation, for the purpose of constructing a waterworks system;

S. 3223. An act for the relief of the dependents of the late Lt. Robert E. Van Meter, United States Navy;

S. 3242. An act to aid in providing a permanent mooring for the battleship *Oregon;*

S. 3365. An act for the relief of Joseph D. Schoolfield;

S. 3410. An act for the relief of Miles A. Barclay;

S. 3416. An act providing for the addition of certain lands to the Black Hills National Forest in the State of Wyoming;

S. 3417. An act for the relief of the State of Wyoming;

S. 3543. An act authorizing the Comptroller General of the United States to settle and adjust the claim of Earle Lindsey;

S. 3820. An act to authorize membership on behalf of the United States in the International Criminal Police Commission;

S. 3822. An act to authorize an increase in the basic allotment of enlisted men to the Air Corps within the total enlisted strength provided in appropriations for the Regular Army;

S. 3849. An act authorizing the Secretary of the Treasury to transfer on the books of the Treasury Department to the credit of the Chippewa Indians of Minnesota the proceeds of a certain judgment erroneously deposited in the Treasury of the United States as public money;

S. 3882. An act amending the act authorizing the collection and publication of cotton statistics by requiring a record to be kept of bales ginned by counties;

H. R. 9995. An act making appropriations for the Military Establishment for the fiscal year ending June 30, 1939, and for other purposes;

H. R. 9996. An act to authorize the registration of certain collective trade-marks;

H. R. 10291. An act making appropriations for the fiscal year ending June 30, 1939, for civil functions administered by the War Department, and for other purposes;

S. J. Res. 243. Joint resolution to provide for the transfer of the Cape Henry Memorial site in Fort Story, Va., to the Department of the Interior;

S. J. Res. 247. Joint resolution authorizing William Bowie, captain (retired), United States Coast and Geodetic Survey, Department of Commerce, to accept and wear decoration of

the Order of Orange Nassau, bestowed by the Government of the Netherlands;

S. J. Res. 289. Joint resolution to provide that the United States extend an invitation to the Governments of the American republics, members of the Pan American Union, to hold the Eighth American Scientific Congress in the United States in 1940 on the occasion of the fiftieth anniversary of the founding of the Pan American Union; to invite these Governments to participate in the proposed congress; and to authorize an appropriation for the expenses thereof; and

H. J. Res. 667. Joint resolution to authorize an appropriation to aid in defraying the expenses of the observance of the seventy-fifth anniversary of the Battles of Chickamauga, Ga., Lookout Mountain, Tenn., and Missionary Ridge, Tenn.; and commemorate the one-hundredth anniversary of the removal from Tennessee of the Cherokee Indians, at Chattanooga, Tenn., and at Chickamauga, Ga., from September 18 to 24, 1938, inclusive; and for other purposes.

CALL OF THE ROLL

Mr. LEWIS. Mr. President, I note that there is not a quorum present, and I ask for a roll call.

The VICE PRESIDENT. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Dieterich	King	Pittman
Andrews	Donahey	La Follette	Pope
Ashurst	Duffy	Lee	Radcliffe
Austin	Ellender	Lewis	Reames
Bailey	Frazier	Lodge	Russell
Bankhead	George	Logan	Schwartz
Barkley	Gerry	Lonergan	Schwellenbach
Berry	Gibson	Lundeen	Sheppard
Bilbo	Glass	McAdoo	Shipstead
Bone	Green	McGill	Smith
Borah	Guffey	McKellar	Thomas, Utah
Brown, Mich.	Hale	McNary	Townsend
Brown, N. H.	Harrison	Maloney	Truman
Bulkley	Hatch	Miller	Tydings
Bulow	Hayden	Milton	Vandenberg
Burke	Herring	Minton	Van Nuys
Byrd	Hill	Murray	Wagner
Byrnes	Hitchcock	Neely	Walsh
Capper	Holt	Norris	Wheeler
Caraway	Hughes	O'Mahoney	
Connally	Johnson, Calif.	Overton	
Copeland	Johnson, Colo.	Pepper	

Mr. LEWIS. I announce that the Senator from New Mexico [Mr. CHAVEZ], the Senator from Missouri [Mr. CLARK], the Senator from Iowa [Mr. GILLETTE], the Senator from Nevada [Mr. MCCARRAN], the Senator from New Jersey [Mr. SMATHERS], and the Senator from Oklahoma [Mr. THOMAS] are detained on important public business.

I also announce that the Senator from North Carolina [Mr. REYNOLDS] is unavoidably detained.

Mr. AUSTIN. I announce that the Senator from New Hampshire [Mr. BRIDGES] is absent because of the death of his wife, and that the Senator from Pennsylvania [Mr. DAVIS] is necessarily detained from the Senate.

The VICE PRESIDENT. Eighty-five Senators have answered to their names. A quorum is present.

MESSAGES FROM THE PRESIDENT—APPROVAL OF BILLS

Messages in writing from the President of the United States were communicated to the Senate by Mr. Latta, one of his secretaries, who also announced that the President had approved and signed the following acts:

On May 31, 1938:

S. 3532. An act to extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Randolph, Mo.;

S. 3691. An act to provide for the appointment of additional judges for certain United States district courts, circuit courts of appeals, and certain courts of the United States for the District of Columbia; and

S. 3949. An act to amend the Agricultural Adjustment Act of 1938.

On June 1, 1938:

S. 3526. An act to provide for reimbursing certain railroads for sums paid into the Treasury of the United States under an unconstitutional act of Congress.

On June 3, 1938:

S. 3843. An act to remove certain inequitable requirements for eligibility for detail as a member of the General Staff Corps.

On June 7, 1938:

S. 1307. An act for the relief of W. F. Lueders; and

S. 3522. An act authorizing the President to present the Distinguished Service Medal to Rear Admiral Reginald Vesey Holt, British Navy, and to Capt. George Eric Maxia O'Donnell, British Navy; and the Navy Cross to Vice Admiral Lewis Gonne Eyre Crabbe, British Navy, and to Lt. Comdr. Harry Douglas Barlow, British Navy.

CORRECTION

Mr. FRAZIER. Mr. President, on behalf of my colleague the junior Senator from North Dakota [Mr. NYE] I ask unanimous consent to have placed in the RECORD a letter from Mr. Lawrence Richey making a correction of a statement in an article which, on request of my colleague, was printed in the RECORD of April 8, 1938.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

WASHINGTON, D. C., *May 4, 1938.*

Hon. GERALD P. NYE,
United States Senate, Washington, D. C.

MY DEAR SENATOR: My attention was called to an editorial entitled "Alias Herbert Hoover," in the People's World of February 28, 1938, which was published in the CONGRESSIONAL RECORD of April 8, 1938, at your request.

I have taken this matter up with Mr. Hoover, and he advises me that he is not now interested and never has been interested in any oil properties in southern California, and that he does not today have the remotest interest in any of the concerns under discussion in the editorial.

I am writing you knowing you would like to have the real facts and hoping you will find some way to make correction in the RECORD.

Yours sincerely,

LAWRENCE RICHEY.

CONSERVATION AND USE OF AGRICULTURAL LAND RESOURCES (S. DOC. NO. 200)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting a proposed provision affecting existing appropriations for the Department of Agriculture for the fiscal years 1938 and 1939, under the headings "Soil Conservation and Domestic Allotment Act," as amended, and "Agricultural Adjustment Act of 1938," as amended, which, with the accompanying paper, was referred to the Committee on Appropriations and ordered to be printed.

SUPPLEMENTAL ESTIMATES, DISTRICT OF COLUMBIA (S. DOC. NO. 199)

The VICE PRESIDENT laid before the Senate a communication from the President of the United States, transmitting supplemental estimates of appropriations for the District of Columbia for the fiscal year 1939, amounting to $16,020, together with a draft of proposed provision pertaining to an existing appropriation, which, with the accompanying papers, was referred to the Committee on Appropriations and ordered to be printed.

INTERNATIONAL AGREEMENT FOR REGULATION OF WHALING

The VICE PRESIDENT laid before the Senate a letter from the Assistant Secretary of Commerce, transmitting a draft of proposed legislation to give effect to the international agreement between the United States and certain other countries for the regulation of whaling, signed at London, June 8, 1937, which, with the accompanying paper, was referred to the Committee on Foreign Relations.

REPORT INVOLVING CONTRACT MADE IN VIOLATION OF LAW

The VICE PRESIDENT laid before the Senate a letter from the Acting Comptroller General of the United States, transmitting a report relative to the Navy Department, submitted pursuant to the provisions of section 312 (c) of the Budget and Accounting Act, 42 Stat. 26, requiring the Comptroller General to specially report contracts made by any department or establishment in violation of law, which, with

the accompanying paper, was referred to the Committee on Appropriations.

LIST OF CASES DISMISSED BY COURT OF CLAIMS

The VICE PRESIDENT laid before the Senate a letter from the Chief Clerk of the Court of Claims, advising, pursuant to an order of the court, that certain cases—listed therein—which were referred to the Court of Claims by resolution of the Senate under the act of March 3, 1911, known as the Judicial Code, were dismissed on plaintiff's motion, or for nonprosecution, which was referred to the Committee on Claims.

PETITIONS AND MEMORIALS

The VICE PRESIDENT laid before the Senate the following concurrent resolution of the Legislature of the State of New Jersey, which was ordered to lie on the table:

Concurrent resolution memorializing the Congress of the United States of America to eliminate the taxation of gasoline by the Federal Government

Whereas the Congress of the United States of America in 1932 imposed a tax of 1 cent per gallon upon all sales of gasoline; and

Whereas, the State of New Jersey and all the other States of the United States had already imposed taxes upon such sales; and

Whereas the Federal tax on such sales was untimely and restrictive and, coupled with the respective State taxes on such sales, places a burden upon the users of the gasoline beyond that which they should rightfully carry and beyond that which the traffic can legitimately bear; and

Whereas the taxation of sales of gasoline should properly be left to the exclusive use of the States as a means of providing funds for road construction and maintenance: Now, therefore, be it

Resolved by the Assembly of the State of New Jersey (the Senate concurring therein), That the Congress of the United States be and is hereby respectfully memorialized to abandon the Federal gasoline sales tax and surrender to the States exclusively the power to tax such sales in the future; and be it further

Resolved, That a copy of this resolution be transmitted to the President of the United States, the Clerk of the House of Representatives, the Secretary of the United States Senate, and to each Member of Congress elected from the State of New Jersey, and that the latter be requested to use their best endeavors to accomplish the purpose of this resolution.

Mr. WALSH presented petitions of sundry citizens of the State of Massachusetts, praying for the adoption of policies designed to keep the United States out of war and also the adoption of an adequate national-defense program, which were referred to the Committee on Foreign Relations.

Mr. OVERTON presented petitions of sundry citizens of the State of Louisiana, praying for the adoption of policies designed to keep the United States out of war and also the adoption of an adequate national-defense program, which were referred to the Committee on Foreign Relations.

Mr. WHEELER presented petitions of sundry citizens of the State of Montana, praying for the adoption of policies designed to keep the United States out of war and also the adoption of an adequate national-defense program, which were referred to the Committee on Foreign Relations.

Mr. COPELAND presented a resolution adopted by local No. 281, United Brotherhood of Carpenters and Joiners, of Binghamton, N. Y., favoring the enactment of legislation to provide for Government-owned and controlled hospitals, which was referred to the Committee on Commerce.

He also presented a resolution adopted by the Queens County (N. Y.) Committee of the American Legion, favoring the enactment of legislation providing that honorably discharged veterans who served in the armed forces of the United States during a war shall be eligible for employment by the W. P. A. and P. W. A. regardless of their home-relief status, which was referred to the Committee on Education and Labor.

He also presented a letter in the nature of a memorial from the delegates of the Congregational-Christian Churches of the State of New York, assembled at Niagara Falls, N. Y., remonstrating against the enactment of legislation to prevent profiteering in time of war and to equalize the burdens of war and thus provide for the national defense, and promote peace, which was referred to the Committee on Finance.

He also presented a resolution adopted by Rochester Lodge No. 99, Brotherhood of Locomotive Firemen and Enginemen, of Rochester, N. Y., protesting against the enactment of legislation to prevent profiteering in time of war and to equalize the burdens of war and thus provide for the national defense, and promote peace, which was referred to the Committee on Finance.

He also presented a resolution adopted by the Nassau County Council, Veterans of Foreign Wars of the United States, of Malverne, N. Y., protesting against the entrance of aliens into the United States during the past 6 weeks, which was referred to the Committee on Immigration.

He also presented a resolution adopted by the Queens County (N. Y.) Committee of the American Legion, favoring the enactment of legislation providing that all immigration to the United States be reduced by 90 percent of existing quotas, which was referred to the Committee on Immigration.

He also presented a resolution adopted by the Queens County (N. Y.) Committee of the American Legion, favoring the enactment of legislation to terminate all Government relief or other assistance being granted to alien residents of the United States, which was ordered to lie on the table.

REPORTS OF COMMITTEES

Mr. BROWN of Michigan, from the Committee on Claims, to which was referred the bill (S. 3950) for the relief of the American National Bank, of Kalamazoo, Mich., reported it without amendment and submitted a report (No. 1995) thereon.

Mr. SCHWELLENBACH, from the Committee on Claims, to which was referred the bill (S. 3628) to confer jurisdiction on the Court of Claims to hear, determine, and enter judgment upon the claims of Government contractors whose costs of performance were increased as a result of enactment of the National Industrial Recovery Act, June 16, 1933, reported it without amendment and submitted a report (No. 1996) thereon.

Mr. MILTON, from the Committee on Claims, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 3803. A bill to amend the act entitled "An act giving jurisdiction to the Court of Claims to hear and determine the claim of the Butler Lumber Co., Inc. (Rept. No. 1997); and

H. R. 7537. A bill for the relief of certain stevedores employed on the United States Army transport docks in San Francisco, Calif. (Rept. No. 1998).

Mr. LOGAN, from the Committee on Claims, to which was referred the bill (H. R. 4571) for the relief of Helen Mahar Johnson, reported it with amendments and submitted a report (No. 1999) thereon.

Mr. CAPPER, from the Committee on Claims, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

H. R. 2487. A bill for the relief of Thomas J. Allen, Jr. (Rept. No. 2000);

H. R. 2650. A bill for the relief of Veracunda O'Brien Allen (Rept. No. 2001);

H. R. 3747. A bill for the relief of George O. Wills (Rept. No. 2002);

H. R. 4169. A bill to carry out the findings of the Court of Claims in the case of the Atlantic Works, of Boston, Mass. (Rept. No. 2003);

H. R. 4227. A bill for the relief of Mrs. R. A. Smith (Rept. No. 2004);

H. R. 6186. A bill for the relief of Moses Red Bird (Rept. No. 2005);

H. R. 6669. A bill for the relief of Augusta L. Collins (Rept. No. 2006);

H. R. 7012. A bill for the relief of J. Anse Little (Rept. No. 2007);

H. R. 7060. A bill for the relief of James Mohin and Joseph Lercara (Rept. No. 2008);

H. R. 7166. A bill for the relief of the estate of Raymond Finklea (Rept. No. 2009);

H. R. 7429. A bill for the relief of Muriel C. Young (Rept. No. 2010);

H. R. 7460. A bill for the relief of Mr. and Mrs. Roy Blessing (Rept. No. 2011);

H. R. 8051. A bill for the relief of Roswell H. Haynie (Rept. No. 2012);

H. R. 8123. A bill for the relief of Sonia M. Bell (Rept. No. 2013);

H. R. 8241. A bill for the relief of Fred J. Christoff (Rept. No. 2014); and

H. R. 8365. A bill for the relief of the North Mississippi Oil Mills, of Holly Springs, Miss. (Rept. No. 2015).

Mr. CAPPER also, from the Committee on Immigration, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

H. R. 7297. A bill for the relief of Gordon L. Cheasley (Rept. No. 2026); and

H. R. 8743. A bill for the relief of Louis Michael Bregantic (Rept. No. 2027).

Mr. SHEPPARD, from the Committee on Commerce, to which were referred the following bills, reported them severally without amendment and submitted reports thereon:

H. R. 10076. A bill to create the White County Bridge Commission; defining the authority, power, and duties of said commission; and authorizing said commission and its successors and assigns to purchase, maintain, and operate a bridge across the Wabash River at or near New Harmony, Ind. (Rept. No. 2017);

H. R. 10225. A bill to amend section 6 of chapter 64, approved April 24, 1894 (U. S. Stat. L., vol XXVIII, 2d sess., 53d Cong.), being an act entitled "An act to authorize the construction of a steel bridge over the St. Louis River, between the States of Wisconsin and Minnesota" (Rept. No. 2018); and

H. R. 10346. A bill to extend the times for commencing and completing the construction of a bridge across the Missouri River at or near Niobrara, Nebr. (Rept. No. 2019).

Mr. SHEPPARD also, from the Committee on Military Affairs, to which was referred the bill (H. R. 9014) to authorize the conveyance to the Lane S. Anderson Post, No. 297, Veterans of Foreign Wars of the United States, of a parcel of land at lock No. 6, Kanawha River, South Charleston, W. Va., reported it without amendment and submitted a report (No. 2034) thereon.

Mr. COPELAND, from the Committee on Commerce, to which were referred the following bills and joint resolution, reported them severally without amendment and submitted reports thereon as indicated:

S. 4145. A bill to authorize contingent expenditures, United States Coast Guard Academy;

H. R. 10536. A bill authorizing the United States Maritime Commission to sell or lease the Hoboken Pier Terminals, or any part thereof, to the city of Hoboken, N. J. (Rept. No. 2016);

H. R. 10672. A bill to amend section 4197 of the Revised Statutes, as amended (U. S. C., 1934 ed., title 46, sec. 91); and section 4200 of the Revised Statutes (U. S. C., 1934 ed., title 46, sec. 92), and for other purposes (Rept. No. 2020); and

H. J. Res. 688. Joint resolution creating the Niagara Falls Bridge Commission and authorizing said commission and its successors to construct, maintain, and operate a bridge across the Niagara River at or near the city of Niagara Falls, N. Y. (Rept. No. 2021).

Mr. COPELAND also, from the Committee on Immigration, to which was referred the bill (S. 3389) for the relief of Albert Richard Jeske, reported it without amendment and submitted a report (No. 2022) thereon.

He also, from the Committee on the District of Columbia, to which was referred the bill (H. R. 7982) to regulate the manufacturing, dispensing, selling, and possession of narcotic drugs in the District of Columbia, reported it without amendment and submitted a report (No. 2032) thereon.

Mr. JOHNSON of California, from the Committee on Commerce, to which was referred the bill (H. R. 9916) to provide for the establishment of a Coast Guard station at or near Shelter Cove, Calif., reported it without amendment and submitted a report (No. 2023) thereon.

Mr. MALONEY, from the Committee on Immigration, to which were referred the following bills, reported them each without amendment and submitted reports thereon:

S. 3816. A bill authorizing the naturalization of Olaf Nordman (Rept. No. 2024); and

H. R. 9400. A bill for the relief of Adolph Arendt (Rept. No. 2025).

Mr. SCHWELLENBACH, from the Committee on Immigration, to which was referred the bill (H. R. 8275) for the relief of Stanley Kolitzoff and Marie Kolitzoff, reported it without amendment and submitted a report (No. 2028) thereon.

Mr. HUGHES, from the Committee on Immigration, to which was referred the bill (H. R. 8858) for the relief of Joseph Brum and Gussie Brum, reported it without amendment and submitted a report (No. 2029) thereon.

Mr. BARKLEY, from the Committee on Finance, to which was referred the joint resolution (H. J. Res. 683) to provide for a floor stock tax on distilled spirits, except brandy, reported it without amendment and submitted a report (No. 2031) thereon.

Mr. KING, from the Committee on the District of Columbia, to which was referred the bill (S. 3238) to provide for recording of deeds of trust and mortgages secured on real estate in the District of Columbia, and for the releasing thereof, and for other purposes, reported it with amendments and submitted a report (No. 2033) thereon.

Mr. ADAMS (for Mr. BANKHEAD), from the Committee on Irrigation and Reclamation, to which was referred the bill (H. R. 7764) to authorize the sale of surplus power developed under the Uncompahgre Valley reclamation project, Colorado, reported it without amendment and submitted a report (No. 2035) thereon.

Mr. PITTMAN, from the Committee on Foreign Relations, to which was referred the bill (S. 4044) to authorize the President to permit citizens of the American Republics to receive instruction at professional educational institutions and schools maintained and administered by the Government of the United States or by Departments or agencies thereof, reported it with an amendment and submitted a report (No. 2036) thereon.

REPORT ON INVESTIGATION OF THE AMERICAN COTTON COOPERATIVE ASSOCIATION (REPT. NO. 2030)

Mr. ELLENDER. On behalf of the Senator from Alabama [Mr. BANKHEAD] and myself, from the Committee on Agriculture and Forestry, I submit a report pertaining to the investigation of certain activities of the American Cotton Cooperative Association. I ask that it be printed in the RECORD, and in the usual report form.

There being no objection, the report was ordered to be printed in the RECORD, as follows:

The Committee on Agriculture and Forestry which was authorized and directed to make a full and complete investigation of certain activities of the American Cotton Cooperative Association pursuant to Senate Resolution 137 of the Seventy-fifth Congress, first session, and Senate Resolution 205 of the Seventy-fifth Congress, third session, having completed its investigation, makes the following report:

I. COMMODITY CREDIT CORPORATION

A. IN CONNECTION WITH THE GRADING, STAPLING, RECONCENTRATION, AND MARKETING OF COTTON FINANCED BY THE FEDERAL GOVERNMENT BY MEANS OF LOANS AND ADVANCES MADE BY THE COMMODITY CREDIT CORPORATION AND THE COTTON PRODUCERS POOL

The Commodity Credit Corporation entered into a contract with the American Cotton Cooperative Association for the reconcentration and reclassification of approximately 1,600,000 bales of 12-cent-loan cotton. The committee finds that there was no deliberate or intentional overclassing or underclassing of this cotton. The evidence shows that the classing was reasonably accurate, considering the inexactness of the existing methods of classifying and grading cotton. The testimony indicates that there was considerable difference with respect to the reclassing and regrading of cotton located in South Carolina, but experienced witnesses agreed and the record indicates that where the same cotton is classed by two competent classers at different times, at different locations, on different samples, and under varying conditions as

to light, humidity, etc., wide differences in classifications may and do often result. Several witnesses testified that a difference of as much as 30 points was not unusual and their testimony was borne out by actual figures presented to the committee with respect to the regrading of some 40,000 bales in South Carolina. One classification of one-thousand-seven-hundred-and-some-odd bales of certain cotton in South Carolina made by Government classifiers showed little difference when compared to the original classification of A. C. C. A. Later on a portion of that same lot of cotton was again regraded and reclassed under Government supervision and differences in classification ranged from 1.7 over, to as much as 86.2 under.

On the other hand, the evidence discloses that a comparison made by the Commodity Credit Corporation of the class placed on 64,724 bales of reconcentrated cotton by the B. A. E. board of examiners and the class placed on the same cotton by A. C. C. A. showed a difference of less than 1 point, or less than 5 cents per bale in value. The committee finds that the classification and regrading of cotton made under ordinary trade conditions and in the usual course of business were fairly accurate. There may have been instances where errors occurred in classing individual bales, but, on the whole, there is little or no cause for complaint.

The committee was unable to discover any motive for the alleged underclassing of said cotton by A. C. C. A. Several witnesses testified that the only way by which A. C. C. A. could have benefited by underclassing was to purchase this underclassed cotton and sell it for a better grade. The evidence discloses that A. C. C. A. did purchase 135,398 bales, 30 to 40 percent of which was reconcentrated cotton, and an average of $2.05 per bale was paid to the farmers by A. C. C. A. in addition to the payment of all of the loans with interest, storage, and other carrying charges. The evidence further discloses that A. C. C. A. did not buy any of this cotton except at the request of and for the benefit of certain of its associations' farmer members. The evidence does not show that A. C. C. A. benefited in any of these transactions, except by such profits as may have accrued in the ordinary and usual course of its business. There is no evidence to the effect that any of the members of the association profited through any of these transactions or in fact in any of the dealings of the association.

II. COTTON PRODUCERS' POOL

That the Secretary of Agriculture acquired 2,500,000 bales of cotton, of which 600,000 bales were futures, thereby leaving 1,900,000 bales of actual cotton. Hon. Oscar Johnston was appointed by the Secretary as pool manager and later he entered into a contract with A. C. C. A. for the handling of said cotton under his direction. The evidence does not show that said cotton was underclassed. The adjustments made on said cotton as a result of underclassing or overclassing were negligible, considering the fact that the classing of cotton is a very inexact science.

The committee wishes to quote from the testimony of Mr. Johnston appearing on page 173 of the transcript, as follows:

"In my experience in handling cotton 30-odd years, I have never seen nor have had done a nicer marketing job nor more satisfactory marketing job than was done by American Cotton Cooperative Association and their personnel in the handling of that 1,900,000 bales of actual cotton."

The committee believes that Mr. Johnston was fully justified in making the above statement.

B. THE BONA FIDE MEMBERS IN A. C. C. A. AND WHETHER THEY ARE TRUE COOPERATIVES

Under the law, "persons engaged in the production of the agricultural products to be handled by or through the association, including lessees and tenants of land used for the production of such products, and any lessors and landlords who receive as rent all or any part of the crop raised on the leased premises" are entitled to membership and eligibility of membership is determined by State law.

Governor Myers testified:

"Furthermore, the law does not prescribe any fixed form of application or method that must be followed by nonstock associations in obtaining their membership. Neither is it required as a matter of law that such associations enter into marketing agreements with their members; and, of course, it is optional with associations whether they shall charge membership fees. * * *

There was no evidence by any members of these associations that they were dissatisfied with the conduct and affairs of A. C. C. A.

C. INTERLOCKING DIRECTORATES

The evidence discloses that the directors of the State and regional associations are elected by the farmer members. The farmers through their representative boards elect one director in A. C. C. A. There was no complaint furnished the committee as to the method of electing directors.

D. FINANCIAL STRUCTURE AND OPERATIONS; WHETHER OR NOT A. C. C. A. IS A COTTON COOPERATIVE OR SIMPLY A BUYING AND SELLING ORGANIZATION FOR THE BENEFIT OF ITS OFFICERS; THE LENDING OF MONEY BY THE GOVERNMENT TO INDIVIDUAL ASSOCIATIONS FOR THE USE OF A. C. C. A.; ITS SOLVENCY AND THAT OF ITS MEMBER ASSOCIATIONS; ITS BORROWING OF MONEY FROM GOVERNMENT AGENCIES OR PRIVATE COMPANIES AND ITS PRESENT INDEBTEDNESS TO THE GOVERNMENT OR ITS AGENCIES; ANY SPECULATION MADE BY SAID ASSOCIATION OR ITS MEMBERS IN COTTON

The financial statements furnished to the committee and the evidence of several witnesses, some from the Farm Credit Administration, indicate that A. C. C. A. is solvent, that its capital and surplus as of June 30, 1937, the close of its fiscal year, amounted to $6,166,245.96. As of February 28, 1938, it had a paid-up capital of $6,154,700 and a surplus of $227,684.76. Five million dollars of this amount represents paid-up capital by the various State associations that own the capital stock of A. C. C. A. This latter sum was borrowed from the Farm Credit Administration, repayable over a period of years. To this date, the State associations have repaid $360,000. Seven of the stockholder members have net assets of $1,368,558.08, and five have a combined deficit of $109,859.74.

On March 8, 1938, the State and regional associations owed the Farm Credit Administration a total of $4,640,000. The sum is secured by 57,155 shares of A. C. C. A. preferred stock, valued at $5,715,500.

During the season 1937–38 the Central Bank for Cooperatives loaned to A. C. C. A. $5,250,000, of which amount $1,500,000 has been repaid and the balance is not yet due. A. C. C. A. makes loans from private banks each season ranging from $25,000,000 to as much as $75,000,000. At the request of the Central Bank for Cooperatives 20 percent of these loans secured by cotton were made from it by A. C. C. A.

The evidence discloses that A. C. C. A. is operated for the benefit of its members and there is no evidence whatever of any speculation in cotton. The cooperatives have handled and hedged cotton received according to normal trade practices. We quote from the testimony of Governor Myers:

"Q. You consider the American Cotton Cooperative Association now fully in accordance with the idea of a cooperative association?

"Mr. MYERS. I think it is fully in accordance with the law, I think like all organizations it falls short of our ideals. I believe intelligent effort has been made and is being made more closely to obtain the ideals of what is expected in a farmer cooperative organization * * *."

E. OPERATIONS WITH THE SEED LOAN BORROWERS

The evidence shows no irregularities in the handling of seed-loan cotton. It was disposed of in accordance with the rules and regulations of the Farm Credit Administration and there was no complaint made by the seed-loan borrowers.

F. INTEREST RATE; INTEREST RATE A. C. C. A. PAYS OR HAS PAID TO THE GOVERNMENT OR ITS AGENCIES AND THE INTEREST RATE IT CHARGES OR HAS CHARGED THE FARMERS

During the 1930–31 and 1931–32 seasons the Federal Farm Board loaned money to A. C. C. A. at rates of three-eighths of 1 percent, and during subsequent seasons at rates of from 3 to 4 percent. During the 1936–37 and the 1937–38 seasons, the Central Bank for Cooperatives charged a rate of interest of 2 percent on commodity loans fully secured.

Prior to 1933–34 A. C. C. A. made loans to State and regional associations and charged an interest spread of from 1 to 2 percent in accordance with its bylaws. Proceeds from the interest spread have accrued to the State cooperatives. Since the beginning of the 1933–34 season few loans to individual associations have been made and the interest rates ranged from 3 to 5 percent.

G. WAIVER OF PRIOR LIENS FOR THE GOVERNMENT AND ITS AGENCIES

On one occasion in 1932 the Federal Farm Board waived a second lien which it held on cotton belonging to A. C. C. A. Neither the Farm Credit Administration nor any of its agencies has waived prior liens in connection with extension of credit to A. C. C. A.

H. INVESTMENTS IN REAL ESTATE OF A. C. C. A. AND ITS STOCKHOLDER MEMBERS

The evidence shows that A. C. C. A. owns no real estate, but six of its stockholder-member associations own real estate valued at approximately $300,000, said property consisting of buildings, gins, and warehouses.

I. ACCOUNTING OF FARM CREDIT ADMINISTRATION AND ITS PREDECESSORS REPRESENTING THE GOVERNMENT WITH A. C. C. A. AND ITS AFFILIATES, INCLUDING TOTAL AMOUNT OF LOSSES SUSTAINED IN DEALING WITH THE GOVERNMENT BY THE A. C. C. A. AND ITS PREDECESSORS AND AFFILIATES UP TO DATE AND THE TOTAL LOSS OF THE FARMERS AND THE GOVERNMENT

The evidence given by Governor Myers clearly demonstrates that the Government has experienced no loss in its operation with A. C. C. A. or affiliate associations subsequent to the loss occurring from the Federal Farm Board's stabilization operations. The evidence does not disclose a loss to farmers, but on the contrary, it shows that the spread between the farmer and the cotton consumer has been considerably decreased to the advantage and benefit of the cotton farmers of the Nation.

J. SALARIES OF THE MANAGER AND OTHER EMPLOYEES

The question of the salaries paid to the manager and other employees of the association was raised during the hearings and the committee finds that although the salary of the manager is probably high, it is under that paid to other managers doing like work and having similar responsibilities in the cotton trade.

RECOMMENDATIONS

It is recommended that the Secretary of Agriculture be requested to make a thorough study of the general subject of the classification of cotton, and that he be asked to submit for the consideration of the next session of Congress a proposed bill providing under Government supervision and regulation classification of all cotton produced in the United States in such a manner that the

official Government classification of every bale so produced may be made available to the producer at the earliest practicable date after ginning, and so that such official Government classification shall follow each bale through the channels of trade until consumed.

ALLEN J. ELLENDER.
J. H. BANKHEAD, II.

BILLS INTRODUCED

Bills were introduced, read the first time, and, by unanimous consent, the second time, and referred as follows:

By Mr. FRAZIER:

A bill (S. 4153) to carry out the findings of the Court of Claims in the case of Lester P. Barlow against the United States; to the Committee on Claims.

By Mr. TYDINGS:

A bill (S. 4154) to authorize and direct the Commissioners of the District of Columbia to set aside the trial-board conviction of Policemen David R. Thompson and Ralph S. Warner and their resultant dismissal, and to reinstate David R. Thompson and Ralph S. Warner to their former positions as members of the Metropolitan Police Department; to the Committee on the District of Columbia.

A bill (S. 4155) to authorize the county of Kauai to issue bonds of such county in the year 1938 under the authority of Act 186 of the Session Laws of Hawaii, 1937, in excess of 1 percent of the assessed value of the property in said county as shown by the last assessment for taxation; to the Committee on Territories and Insular Affairs.

By Mr. COPELAND:

A bill (S. 4156) to amend the act of March 2, 1929, entitled "An act to establish load lines for American vessels, and for other purposes"; to the Committee on Commerce.

By Mr. LODGE:

A bill (S. 4157) to increase old-age benefit payments by one-third; ordered to lie on the table.

By Mr. SHIPSTEAD:

A bill (S. 4158) authorizing the States of Minnesota and Wisconsin, jointly or separately, to construct, maintain, and operate a free highway bridge across the Mississippi River at or near Winona, Minn.; to the Committee on Commerce.

By Mr. McADOO:

A bill (S. 4159) to authorize Federal cooperation in the acquisition of the "Muir Wood Toll Road," located in Marin County, State of California, and for other purposes; to the Committee on Post Offices and Post Roads.

By Mr. DUFFY:

A bill (S. 4160) to amend section 327 of the Liquor Tax Administration Act, approved June 26, 1936, to permit an allowance for breakage and leakage in brewery bottling operations; to the Committee on Finance.

AUTHORIZATION OF WORKS ON RIVERS AND HARBORS FOR FLOOD CONTROL—AMENDMENT

Mr. McNARY submitted an amendment intended to be proposed by him to the bill (H. R. 10618) authorizing the construction of certain public works on rivers and harbors for flood control, and for other purposes, which was ordered to lie on the table and to be printed.

AMENDMENTS TO SECOND DEFICIENCY APPROPRIATION BILL

Mr. PITTMAN submitted amendments intended to be proposed by him to House bill 10851, the second deficiency appropriation bill, 1938, which were referred to the Committee on Appropriations and ordered to be printed, as follows:

Amendments intended to be proposed by Mr. PITTMAN to the bill (H. R. 10851) making appropriations to supply deficiencies in certain appropriations for the fiscal year ending June 30, 1938, and for prior fiscal years, to provide supplemental appropriations for the fiscal years ending June 30, 1938, and June 30, 1939, and for other purposes, viz: On page 64, line 16, strike out "$50,000" and insert "$66,000."

On page 64, line 22, strike out "$25,000" and insert "$31,750", and after the word "exchange", on page 64, line 25, change the period to a comma and add "and not to exceed $7,500 for expenses of attendance at meetings concerned with the work of the Department of State when authorized by the Secretary of State."

On page 69, line 8, strike out "1939" and insert "1938."

On page 69, line 25, after "1939", strike out the colon, insert a period and strike out "*Provided*, That no salary shall be paid hereunder at a rate in excess of $10,000 per annum."

On page 70, line 13, strike out "$10,000" and insert "$15,500."

At the proper place in the bill insert "Inter-American Highway, $500,000."

INVESTIGATION OF ALLEGED USE OF RELIEF AND WORK-RELIEF FUNDS FOR POLITICAL PURPOSES—CHANGE OF REFERENCE

Mr. TYDINGS. Mr. President, yesterday I submitted a resolution (S. Res. 290) providing for the appointment of three Senators in certain cases where the use of politics is alleged in W. P. A. I understand that, under the rule, the resolution should have been referred to the Committee to Audit and Control the Contingent Expenses of the Senate. It was referred to the Committee on Appropriations. I ask unanimous consent that the Committee on Appropriations be discharged from the further consideration of the resolution and that it be referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

The VICE PRESIDENT. Is there objection to the request of the Senator from Maryland that the Committee on Appropriations be discharged from the further consideration of the resolution referred to by him and that it be referred to the Committee to Audit and Control the Contingent Expenses of the Senate?

Mr. BARKLEY. Mr. President, reserving the right to object, let me say that the function of the Committee to Audit and Control the Contingent Expenses of the Senate ordinarily is to provide the funds after a standing committee of the Senate has reported favorably upon a resolution which provides for an expenditure. What is the occasion for having the resolution in this instance pursue a different course?

Mr. TYDINGS. In this case the resolution has no relation to any particular committee. Usually a resolution of investigation is along some line of activity of the Senate or the House of Representatives. As this is a detached matter, I have taken it up with the chairman of the Committee to Audit and Control the Contingent Expenses of the Senate, the Senator from South Carolina [Mr. BYRNES], and am advised that, as the money is to come out of the general fund for the contingent expenses of the Senate, it is not necessary in this case that the resolution be referred to the Committee on Appropriations. The Committee on Appropriations, as I understand, is perfectly willing to report it, but I do not think that is necessary, because it would be a useless step and no purpose would be served.

Mr. BARKLEY. Of course, I have no information as to the attitude of either the Committee on Appropriations or the Committee to Audit and Control the Contingent Expenses of the Senate with respect to the resolution. So I am not in a position to prophesy what either committee would do about it.

Mr. TYDINGS. It may not come out of the committee, but it should have been referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

Mr. BARKLEY. I have no objection.

The VICE PRESIDENT. Without objection, the Committee on Appropriations is discharged from further consideration of Senate Resolution 290, and the resolution is referred to the Committee to Audit and Control the Contingent Expenses of the Senate.

INVESTIGATION OF ALLEGED USE OF RELIEF AND WORK-RELIEF FUNDS FOR POLITICAL PURPOSES—AMENDMENT

Mr. McADOO submitted an amendment intended to be proposed by him to the resolution (S. Res. 290) providing for an investigation of the alleged use of relief and work-relief funds for political purposes (submitted by Mr. TYDINGS and others on the 7th instant), which was referred to the Committee to Audit and Control the Contingent Expenses of the Senate and ordered to be printed.

INVESTIGATIONS CONCERNING FOREIGN MARKETS FOR TOBACCO AND USE OF TOBACCO PRODUCTS

Mr. BYRD submitted a resolution (S. Res. 291), which was ordered to lie on the table, as follows:

Resolved, That the Secretary of Agriculture is requested (1) to make a thorough study and investigation, immediately, of foreign markets and the possibilities of increased exports for all grades of tobacco and tobacco products, (2) to formulate and give full consideration to a plan or plans for increasing such exports and

enabling such exports to be made on a subsidized basis, (3) to make a thorough study and investigation of the use of byproducts of tobacco, and especially the use of nicotine as an insecticide and the cost of its manufacture, with a view to increasing the markets for such byproducts, and such investigation to be made one of the first activities of the farm laboratories when established, and (4) to transmit to the Senate, at the earliest practicable date, the results of his study and investigation, together with his recommendations and the plan or plans formulated by him and estimates of the probable expense to the Government which would be involved.

MR. AND MRS. JAMES CRAWFORD

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 2643) for the relief of Mr. and Mrs. James Crawford, which were, on page 1, line 5, to strike out all after "appropriated" down to and including "Crawford" in line 6, and insert "to Mr. and Mrs. James Crawford, of the Umatilla Indian Reservation, Oreg., the sums of $500 and $1,000, respectively"; on page 1, line 8, to strike out "damages resulting from"; on page 1, line 8, after "injuries", to insert "and property damage"; on page 1, lines 11 and 12, to strike out "Government"; and on page 2, line 1, after "Agriculture", to insert "on August 31, 1936."

The VICE PRESIDENT. The Chair understands that the Senator from Oregon [Mr. McNARY], who seems to be temporarily absent from the Chamber, desires to move to concur in the House amendments to the bill. Without objection, the House amendments are concurred in. The Chair hears no objection.

JOHN H. OWENS

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 1274) to confer jurisdiction upon the United States District Court for the District of Nebraska to determine the claim of John H. Owens, which were to strike out all after the enacting clause and insert:

That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to John H. Owens, of Omaha, Nebr., the sum of $1,500, in full satisfaction of his claim against the United States for personal injuries sustained on September 23, 1931, when the automobile he was driving was struck at the intersection of Twentieth and Harney Streets, Omaha, Nebr., by an automobile owned by the Department of Agriculture and operated by an employee thereof: *Provided*, That no part of the amount appropriated in this act in excess of 10 percent thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding $1,000.

And to amend the title so as to read: "An act for the relief of John H. Owens."

Mr. BURKE. I move that the Senate concur in the House amendments.

The motion was agreed to.

RECONCENTRATION OF COTTON

The VICE PRESIDENT laid before the Senate the amendment of the House of Representatives to the bill (S. 3836) relating to the manner of securing written consent for the reconcentration of cotton under section 383 (b) of the Agricultural Adjustment Act of 1938, which was, on page 2, line 9 after "Corporation", to insert:

Provided, however, That in cases where there is congestion and lack of storage facilities, and the local warehouse certifies such fact and requests the Commodity Credit Corporation to move the cotton for reconcentration to some other point, or when the Commodity Credit Corporation determines such loan cotton is improperly warehoused and subject to damage, or if uninsured, or if any of the terms of the loan agreement are violated, or if carrying charges are substantially in excess of the average of carrying charges available elsewhere, and the local warehouse, after notice, declines to reduce such charges, such written consent as provided in this amendment need not be obtained; and consent to movement under any of the conditions of this proviso may be required in future loan agreements.

Mr. BANKHEAD. I move that the Senate concur in the House amendment.

The motion was agreed to.

E. E. TILLETT

The VICE PRESIDENT laid before the Senate the amendments of the House of Representatives to the bill (S. 2553) for the relief of E. E. Tillett, which were, on page 1, line 6, to strike out "$781.64" and insert "$774.64"; on page 2, line 4, to strike out "$781.64" and insert "$774.64"; and on page 2, line 16, to strike out all after "1936" down to and including "Office" in line 17.

Mr. BYRD. I move that the Senate concur in the House amendments.

The motion was agreed to.

CORRESPONDENCE IN RE PAX AMERICA

Mr. PEPPER. Mr. President, I ask unanimous consent to have printed as a Senate document some correspondence between Henry H. Buchman, president of Pax America, and myself.

The VICE PRESIDENT. Is there objection? The Chair hears none, and the matter referred to will be printed as a Senate document.

GIVE THE FARMER A CHANCE

[Mr. LEE asked and obtained leave to have printed in the RECORD some extracts from a speech of his own on the farm question, which appear in the Appendix.]

ACHIEVEMENTS OF NATIONAL AIR MAIL WEEK—ADDRESS BY POSTMASTER GENERAL FARLEY

[Mr. McKELLAR asked and obtained leave to have printed in the RECORD a radio address on the achievements of National Air Mail Week, delivered by Hon. James A. Farley, Postmaster General, on June 7, 1938, which appears in the Appendix.]

THE ENGINEER PLUS—ADDRESS BY HON. JOHN C. PAGE

[Mr. NORRIS asked and obtained leave to have printed in the RECORD an address entitled "The Engineer Plus" delivered by Hon. John C. Page, Commissioner of Reclamation, before the annual round-up of the Nebraska Engineering Society of Omaha on April 2, 1938, which appears in the Appendix.]

ADMINISTRATIVE PROBLEMS IN SOCIAL SECURITY—ADDRESS BY HON. FRANK BANE

[Mr. HILL asked and obtained leave to have printed in the RECORD an address on Administrative Problems in Social Security delivered by Frank Bane, Executive Director of the Social Security Board, before the International Association of Public Employment Services at Ottawa, Canada, on May 27, 1938, and also an editorial published in the Washington Post on May 28, 1938, in regard to the address, which appear in the Appendix.]

THE CONSTITUTION—THE SUPREME COURT—THE NEW DEAL—ADDRESS BY HON. JAMES A. REED

[Mr. AUSTIN asked and obtained leave to have printed in the RECORD an address on the subject The Constitution; the Supreme Court; the New Deal delivered by Hon. James A. Reed before the American Bar Association at Kansas City, Mo., on September 27, 1937, which appears in the Appendix.]

OIL PACT BETWEEN STANDARD VACUUM CO. AND THE QUEZON GOVERNMENT

[Mr. FRAZIER, on behalf of Mr. NYE, asked and obtained leave to have printed in the RECORD an article entitled "The Oil Pact Between the Standard Vacuum Co. and the Quezon Government" published in the Philippine American Advocate, which appears in the Appendix.]

PAYMENT OF THE DEBTS OF FOREIGN NATIONS BY EXEMPTING EXPORTS OF UNITED STATES FROM TARIFFS, SHIP DUTIES, AND WHARF CHARGES

Mr. LEWIS. Mr. President, I must bring to the attention of the Senate today a subject which is not altogether new, and which, so far as I am concerned, of course has no novelty, but as a recurring responsibility and, as far as I see it, sir, upon this Government a returning and urgent duty.

Next Wednesday there will be due this country, as interest upon the debts which are due the United States from its foreign debtors, sums which in the aggregate will reach $1,000,000,000. Outside of two small countries no one of

these debtors has intimated a desire, much less an intention, to pay this interest as due, or any part of it.

Mr. President, at the same time I beseech the Senate to let me impose upon them the information that the public records will disclose that France is lately advancing the equivalent of $50,000,000 of American money to Turkey. The object of this is to assure Turkey some munitions and ammunition for prospects of war, whatever they are. The nature of this does not concern us deeply, except with regret. At the same time, sir, France is advancing to Czechoslovakia and Poland the equivalent of the sum altogether of $100,000,000. This, in the way of credits, is ostensibly and confessedly for the object of increasing their power in what is called their defense; at any rate, sir, for the uses of war. In the meantime, sir, the debtor England finds it agreeable to extend to Rumania and Portugal what would be more than $50,000,000 in one instance and $100,000,000 in another. This England assumes as necessary to cover their emergencies or their defense demands. These sums are to be paid in such installments as England finds agreeable in her arrangement with Portugal and Rumania. We concede that England has to consider her own impending situation.

At this time, in all these generosities, we cannot fail to note that not one dollar is intimated to be paid to the United States on the debts due us, and this at a time when we are called on to vote vast millions for the relief of our poor, when with money we must meet the necessities of a regrettable but justifiable relief. At the same time, Mr. President, this Government has stupendous indebtedness which it is anxious to meet from other directions. Yet, sirs, while we are enduring this indebtedness, my fellow Senators, while these sums of money are due us and the other sums described are being advanced to other countries by our debtors, I summon the Senate to invite their attention to the fact that these large debtors of ours have lately added more tariffs against United States exports, together with wharf duties and customs privileges and other forms of obligations which attend with burdens exports from our country and the trade that comes from America. The amount that is levied against us in the form of these tariffs, duties, and obligations exactly equals, by a strange coincidence, the amount of 1 month's interest due in this month of June to the United States.

I invite the attention of the Senate to the fact that these debtors find it agreeable not only not to pay us a dollar of the principal, not to offer one dollar of the interest, but at the same time, while they are asking of us a preferential trade treaty which in the generosity of this Government and in the statesmanship of the Secretary of State and the President is being yielded to them, they are levying an increased duty upon the imports of the United States, and a further charge, known as shipping and wharf charges, upon the ships that deliver the produce of the United States to the ports of these our foreign debtors.

Mr. President, this manifest injustice is accompanied, let me add—and here I ask the Senate's attention particularly—by the fact that preferential trade treaties are given by our debtor countries to other countries in Europe, our rivals in trade. These treaties contain specific limitations levied against the United States. Germany and the neighboring countries particularly of Central Europe are by our debtors allowed exemptions from certain obligations, provided these countries give their exclusive trade to the lands—these three, particularly, which are the largest in amount of our debtors.

Mr. President, I do not know what policy induces the Government of my country, outside of a sense of charity and friendship, to tolerate these discriminations against us without ever raising a voice of protest, through our diplomatic channels, against its continuous infliction.

Mr. President, I here and now propose that this Government of ours, either with any trade treaty that it agrees upon, or as preliminary to any trade treaty, or at the appropriate time that may be utilized, make demand on these debtors that they release these tariff duties charged against the United States, and give exemption to United States shipments into their country from tariff taxes, from ship duties, and from any other commercial or wharf obligations, to an amount that shall at least equal the amount of the installments now due and past due of interest that should be paid to the United States.

In this manner these debtors will be able to pay off part of their debts. They will reserve to themselves their cash. They will release us from the payment of these duties and obligations. This will enable our shipments to reach foreign ports upon some equality with the shipments of the other lands to which our debtors have granted trade treaties which give to these other lands a preference over us, with qualifications and contracts within the treaties which practically declare that no trade shall be had with us until that with the other countries has been satisfied—and only that bought from us which these other lands cannot supply.

Sir, in the face of this record, I respectfully urge that the time has come when this honorable body, joining with our State Department, should recommend to our debtors that if they cannot pay us some money, they promptly cease levying these tariff duties and burdens against our exports. This may increase our trade and thus benefit our land at a time like this, when our needs are great, and will offset, sir, the burdens they put upon us, and by this pay something of their obligations long due us.

I realize, sir, that the question of the debts as due and unpaid is not new. I have from time to time brought it to the attention of this honorable body. I recognize that the inaction on the part of this body is due to the courtesy we owe to the State Department, all hoping it will soon initiate some measure looking to the collection of the debts or the equalizing of wrongs, in complete justice to ourselves. We may ratify such measure, or tender to it, sir, such suggestions as may seem pertinent and proper.

Mr. President, I have occupied these few moments prior to the Senate's entering upon the consideration of the river and harbor bill set for this hour that I might bring to the attention of this body that which I feel calls for immediate attention. I ask the Senate to accept my thanks for its consideration but to regard the subject as potent and vital for immediate action.

EMPLOYMENT OF ALIENS BY GOVERNMENTAL DEPARTMENTS OR AGENCIES

Mr. McKELLAR. I ask unanimous consent for the present consideration of Senate Resolution 285, pertaining to the employment of aliens by governmental Departments or agencies.

There being no objection, the resolution (S. Res. 285) submitted by Mr. McKELLAR on May 31, 1938, was considered, read, and agreed to, as follows:

Resolved, That each Department and agency of the Government is requested to transmit to the Senate, at the beginning of the first session of the Seventy-sixth Congress, a list containing the names of all aliens employed by such Department or agency, together with the reasons for their employment.

PERRY'S VICTORY MEMORIAL COMMISSION

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 2009) to authorize the payment of certain obligations contracted by the Perry's Victory Memorial Commission, which were, on page 2, line 12, to strike out "any" and insert "their claims against the United States or the Perry's Victory Memorial Commission, representing"; and on page 2, line 13, after "parties", to insert "necessarily incurred for maintenance of Perry's Victory Memorial Monument, Put in Bay Island, Lake Erie, Ohio, prior to July 6, 1936, at which time control and management of said monument was transferred to the National Park Service of the Interior Department, pursuant to Presidential proclamation."

Mr. BULKLEY. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

CARL ORR

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 2802) for the relief of the legal guardian of Carl Orr, a minor, which were, on page 1, line 8, to strike out "for damages", and to amend the title so as to read: "An act for the relief of Carl Orr, a minor."

Mr. LEE. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

MR. AND MRS. S. A. FELSENTHAL AND OTHERS

The PRESIDENT pro tempore laid before the Senate the amendments of the House of Representatives to the bill (S. 3147) for the relief of Mr. and Mrs. S. A. Felsenthal, Mr. and Mrs. Sam Friedlander, and Mrs. Gus Levy, which were, on page 1, line 6, to strike out "$1,382.75" and insert "$3,000"; on page 1, line 8, to strike out "$3,389.50" and insert "$5,000"; on page 1, line 9, to strike out all after "of" where it appears the first time down to and including "be", in line 10, and insert "$250,"; on page 1, line 11, to strike out all after "for" down to and including "of", in line 2 of page 2; on page 2, line 4, after "a", to insert "United States Army"; on page 2, line 4, to strike out all after "car" down to and including "accident", in line 6; on page 2, line 7, to strike out "Belvidere" and insert "Belvedere"; and on page 2, line 8, to strike out "or about."

Mr. McKELLAR. I move that the Senate concur in the House amendments.

The motion was agreed to.

BOARD OF TRADE GAMBLING IN WHEAT

Mr. CAPPER. Mr. President, I have before me a recent editorial on Gambling in Wheat by A. Q. Miller, editor and publisher of the Belleville (Kans.) Telescope, commenting forcibly on the drive now being made by the grain gamblers to drive down still further the already low market price for wheat.

The United States seems to be due for a wheat crop of close to 900,000,000 bushels, which will mean a total supply of well over a billion bushels of wheat for the coming marketing year. Of course, seeing that the rest of the world also appears to be due to have larger than normal crops, this means low-priced wheat.

But it is little short of criminal, at a time like this, to see the board of trade gamblers driving prices still further down. Last year the United States produced something over 800,000,000 bushels of wheat. Chicago Board of Trade gamblers bought and sold some 10,000,000,000 bushels. Producers and consumers, first one group and then the other, suffer from this gambling in a necessity of life. I am in entire sympathy with Editor Miller's demand that this gambling in wheat be more effectively curbed. I ask unanimous consent that the editorial from the Belleville Telescope be printed in the RECORD at this point as part of my remarks.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Belleville (Kans.) Telescope]

GAMBLING IN WHEAT

(By A. Q. Miller)

The Nation is all set for a 900,000,000-bushel wheat crop, according to crop reporters, and Kansas is marked down to produce somethink over 200,000,000 bushels or nearly a fourth of the entire crop in the United States.

In the meantime the grain gamblers are busy pushing wheat prices down. All sorts of pretexts are used by the speculators to bear the wheat market, as well as other commodity markets. For example, last year the United States produced only 850,000,000 bushels of wheat, but the Chicago grain gamblers bought and sold 10,000,000,000 bushels. This is 12 times as much as the entire wheat crop, and represents nothing more or less than a poker game in which wheat is used as chips. The same system of gambling is used to sell corn, pork, cotton, and other commodities.

For years Congress has tried to place restrictions around this type of practice, one of which requires actual delivery of the product purchased, but even this seems to have been unsuccessful, because the law is not enforced. The normal application of the law of supply and demand is bound to work, just as the law of gravitation cannot be repealed, but the frenzied buying and selling of commodities on the Chicago Board of Trade, which transactions are not represented by actual merchandise, and sales should be prohibited. The actual producers of wheat, and not the speculators in wheat, are the ones who should have the profit for their labor and effort.

If Secretary Wallace or Congress want to do something realistic to help the wheat farmer they will protect him from human wolves who infest the Chicago wheat pit at this time of the year and juggle with the farmers' grain crop.

TRANSFER OF BALTIMORE MAIL LINE SHIPS TO INTERCOASTAL TRAFFIC

Mr. McADOO. Mr. President, on several occasions I have burdened the Senate with some observations on the intercoastal trade of the United States and the injustice which has been done to the great State which in part I represent and to the entire Pacific coast because of the withdrawal of three of America's finest steamships operating between New York and the Pacific coast, and the transfer of those ships to other services.

During the time this matter has been under consideration I introduced certain bills in the Senate to correct the situation, and active negotiations have been in progress with the Maritime Commission. I am very happy now to say that the Maritime Commission has found a solution, by agreement with the International Mercantile Marine Co., which controls the company which has been operating in the trans-Atlantic trade the so-called Baltimore mail steamships vessels.

As a result of this agreement the five Baltimore mail steamships will be transferred to the intercoastal service of the United States, which I think is an excellent solution, at least for the present, of the serious problem which has confronted California and the Pacific coast on account of the withdrawal heretofore of all intercoastal vessels.

I send to the desk and ask to have read to the Senate a brief letter from the Chairman of the Maritime Commission, Admiral Land.

The PRESIDENT pro tempore. The clerk will read.

The legislative clerk read as follows:

UNITED STATES MARITIME COMMISSION,
Washington, June 8, 1938.

Hon. WILLIAM G. McADOO,
United States Senate, Washington, D. C.

MY DEAR SENATOR: With reference to your letter of June 5, there is enclosed herewith a copy of the action taken by the Maritime Commission in connection with the application of the Baltimore Mail Steamship Co. from which you will note that their application to enter the intercoastal service with the five vessels of the Baltimore mail line has been approved by the Commission.

The Commission understands that operations on this new service will begin at the earliest practicable date, this being a matter completely under the cognizance of the owners of the line.

Cordially yours,

E. S. LAND, *Chairman.*

Mr. McADOO. Mr. President, I ask unanimous consent to have incorporated in the RECORD as a part of my remarks the order of the United States Maritime Commission, No. 486, dated June 7, 1938, which I send to the desk.

There being no objection, the order was ordered to be printed in the RECORD, as follows:

[United States Maritime Commission. No. 486. In re application of the Baltimore Mail Steamship Co. to transfer certain vessels owned by it to intercoastal trade. Submitted June 3, 1938. Decided June 7, 1938. Application of Baltimore Mail Steamship Co. for permission to enter intercoastal trade approved, subject to certain restrictions. Cletus Keating for applicant. Roscoe H. Hupper, William P. Palmer, J. R. Bell, Hon. William G. McAdoo, Arthur L. Winn, Jr., W. L. Thornton, Jr., H. J. Wagner, and G. H. Pouder, for intervenors]

REPORT OF THE COMMISSION

By the Commission.

By application, as supplemented, filed May 17, 1938, Baltimore Mail Steamship Co., hereinafter referred to as the "applicant," requests permission under section 805 (a) of the Merchant Marine Act, 1936, to transfer to domestic intercoastal service five combination passenger and cargo vessels owned by it—namely, *City of Baltimore, City of Norfolk, City of Hamburg, City of Havre,* and *City of Newport News.* A public hearing was held pursuant to notice and briefs were filed.

The above-named vessels were formerly operated by that company in foreign commerce between Baltimore, Md., and Newport News and Norfolk, Va., on the one hand, and continental European ports, on the other. Applicant states that, after a contemplated reorganization now in progress, all of its stock will be owned by the

International Mercantile Marine Co. and/or the Atlantic Transport Co. of West Virginia, the Baltimore Trust Co., and the Canton Co.

In 1915 the Atlantic Transport Co. of West Virginia inaugurated a service between the Atlantic and Pacific coasts by the way of the Panama Canal. The Atlantic Transport Co. of West Virginia is a subsidiary of the International Mercantile Marine Co. and owns outright the American Line Steamship Corporation, which has had a service under the name of "Panama Pacific Line" for some time with the vessels *California*, *Pennsylvania*, and *Virginia*, since the latter were constructed.

The Baltimore Mail Steamship Co., a Maryland corporation, at the present time is owned 46.59 percent common stock and 25 percent preferred stock by the Atlantic Transport Co. of West Virginia. According to the record the Baltimore Mail Steamship Co. will be reorganized, after which all of the stock of the Baltimore Mail Steamship Co. will be owned by the International Mercantile Marine Co. and/or the Atlantic Transport Co. of West Virginia and two affiliated companies. It is stated in briefs filed on behalf of applicant that "upon completion of reorganization the Atlantic Transport Co. of West Virginia will own a substantial majority of all of the outstanding stock of the Baltimore Mail Steamship Co."

The International Mercantile Marine Co. controls the Atlantic Transport Co. of West Virginia and also the United States Lines Co., a common carrier by water in foreign commerce, and the holder of an operating-differential subsidy contract under title VI of the Merchant Marine Act, 1936. Section 805 (a) thereof provides, in part, that—

"It shall be unlawful to award or pay any subsidy to any contractor under authority of title VI of this act, or to charter any vessel to any person under title VII of this act, if said contractor or charterer, or any holding company, subsidiary, affiliate, or associate of such contractor or charterer, or any officer, director, agent, or executive thereof, directly or indirectly, shall own, operate or charter any vessel or vessels engaged in the domestic intercoastal or coastwise service, or own any pecuniary interest, directly or indirectly, in any person or concern that owns, charters, or operates any vessel or vessels in the domestic intercoastal or coastwise service, without the written permission of the Commission. Every person, firm, or corporation having any interest in such application shall be permitted to intervene and the Commission shall give a hearing to the applicant and the intervenors. The Commission shall not grant any such application if the Commission finds it will result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service or that it would be prejudicial to the objects and policy of this act."

Carriers actively operating in intercoastal service intervened in opposition to the application. Their contentions, briefly summarized, are that the trade is now overtonnaged; that there is no present need for the vessels of the Baltimore Mail Line; that the transfer of those vessels to the intercoastal trade may disrupt the existing rate basis, especially if service is to cover ports that were not previously served by the Panama Pacific Line; that new construction by existing carriers will be discouraged by the proposed transfer; and that approval of the application in substance will amount to the extension of Government aid to the applicant upon terms not available to them. For these reasons they conclude the proposed operation will result in unfair competition to them and prejudice to the object and policy of the act which we administer. They also contend that the applicant has failed to show the proposed service to be in the public interest.

The vessels involved herein were originally sold in 1921 by the United States Shipping Board and in 1931 were reconstructed by the applicant through the aid of a construction loan made available pursuant to section 11 of the Merchant Marine Act, 1928, aggregating $6,520,706.26, of which $5,933,106.23 is still due. As a part of the application, applicant requests that provision be made for the payment of that indebtedness by equal annual installments during the balance of the present term of existing mortgage. Each vessel has accommodations for 82 passengers, a speed of 16.5 knots with a cargo capacity of about 500,000 cubic feet, of which 26,610 cubic feet is now equipped with circulating air refrigeration. It is contemplated that refrigerated space on each vessel will be increased to approximately 80,000 cubic feet.

The service is proposed to operate in lieu of the service heretofore operated between New York, N. Y., and ports in the State of California by the American Line Steamship Corporation and/or the Atlantic Transport Co. of West Virginia with the steamships *California*, *Pennsylvania*, and *Virginia*. Those vessels, and also the combination passenger and cargo vessels of the Grace Line, Inc., which operated continuously in intercoastal service for many years were recently withdrawn from this route. Except for the westbound service of Dollar Steamship Lines, Inc., Ltd., with infrequent sailings from New York during recent months as a part of its round-the-world service, there is no adequate passenger service between Atlantic and Pacific coast ports of the United States at the present time. Some cargo vessels are equipped with limited passenger space, but they are not classed as passenger vessels. Intervenors supporting the application urge the necessity of such a service by more modern vessels than are now in operation, and of a type and kind suitable for use as naval and military auxiliaries in time of war or national emergency. This need is further evidenced by the substantial number of passengers shown to have been transported during 1937 by the Panama Pacific and the Grace Lines. While applicant's vessels can accommodate but a portion of the passenger traffic previously transported via the Panama Canal, to the extent of their capacity they will serve an existing need.

It is also shown that there is little, if any, adequate space on cargo vessels now in operation for certain classes of refrigerated cargo. Vessels of the Panama Pacific Line were equipped with a total of approximately 300,000 cubic feet of circulating air refrigeration. A representative of the California Fruit Growers' Exchange testified that during the period 1933 to 1937, inclusive, shipments of citrus fruits eastbound exceeded 450,000 boxes per season; that the association filled to capacity all the refrigerated space on the vessels of that line available to it. Vessels of Grace Line, Inc., now withdrawn from service, were also equipped with substantial quantities of circulating air refrigeration. The witnesses for the association testified that it is ready, willing, and able to supply cargo to fill all the refrigerated space on the five vessels. In addition to citrus fruits, shipments moving eastbound which require refrigeration include frozen fish, frozen poultry, eggs, fresh vegetables, and fresh fruits. Westbound commodities requiring refrigeration include confectionery, cranberries, cheese, frozen fish, and oysters. It is clear that a need exists for refrigerated service in intercoastal trade which is evidenced in part by the large number of letters and telegrams from shippers and others that were submitted by the applicant. It was shown that substantial quantities of citrus fruits move all-rail to competitive points in eastern territory, but all-rail rates are substantially higher than via the all-water route to eastern points.

From the foregoing it is clear that to the extent of the refrigerated and passenger service which applicant's proposed operation will afford, its service will not be competitive with that of existing operators.

Intervenors American-Hawaiian Steamship Co. and Luckenbach Steamship Co., Inc., oppose the granting of the application on the ground that the trade is now overtonnaged and that cargo transported by applicant will decrease the carryings of vessels now in operation. They direct attention to present sailings with only part cargoes and state that all lines now operate at a loss. These intervenors operate vessels whose speed is 11.5 knots or more with sailing frequencies in excess of their present competitors. With such advantages they are able to attract high-grade cargo. Testimony in the record indicates that, while there has been some recession in the quantity of higher-grade cargo due to present economical conditions, the decline has not been so marked as that with respect to low-grade cargo, which has fallen off materially.

However, in considering the problems presented by this application, temporary declines in traffic due to existing business conditions should not control. Consideration must be given to the long-term prospects of the trade and to the age of the existing tonnage operated therein. The last factor is of particular significance in view of the fact that no substantial volume of new construction for this trade seems likely at the present time. Therefore, the transfer of the applicant's vessels, which were completely rebuilt in 1931, may be the only means of insuring adequate long-term service for high-grade cargo. Moreover, in this connection it must also be recognized that, while some of the cargo for the proposed operation may be diverted from the objecting water carriers, a substantial amount probably will represent cargo carried by fast intercoastal vessels, viz: *Virginia*, *California*, and *Pennsylvania* controlled by the Atlantic Transport Corporation, of West Virginia, or refrigerated cargo and passenger business for which the objectors' vessels cannot provide. The objectors recognize that they have no right to a monopoly in the trade. Under the ruling herein, the right to compete is not denied to them.

There is no merit in the contention that the proposed operation would result in unfair competition because of the proposed readjustment of the indebtedness covering the applicant's vessels. Such readjustment of the indebtedness as may be hereafter agreed upon would tend to insure orderly liquidation of such indebtedness and would not constitute a grant or disguised subsidy. Similar adjustments have been made in the past with operators engaged in the intercoastal trade, as well as the foreign trade. If found by the Commission to be fair and reasonable, these adjustments in themselves do not introduce any element of unfair competition. In this connection, it also should be noted that the interest rate on the mortgages covering the applicant's vessels would automatically be increased to 5¼ percent, in accordance with the terms of the mortgages.

American-Hawaiian Steamship Co. directs attention to impending dangers to the rate structure now observed by it and other carriers. In any event the rate structure is now constantly subject to jeopardy by our lack of authority to prevent intercoastal operation by other persons, and this alone does not justify a denial of the application.

We find that on this record there will be no unfair competition within the purview of the 1936 act to existing carriers or prejudice to the objects and policy of the Merchant Marine Act, 1936, from the operation of applicant's vessels in the intercoastal trade, and the application will be approved.

In view of this conclusion it is unnecessary to determine whether there has been a continuation of operations. An appropriate order will be entered.

ORDER

At a session of the United States Maritime Commission, held at its office in Washington, D. C., on the — day of June A. D. 1938—

No. 486—In re application of the Baltimore Mail Steamship Co. to transfer certain vessels owned by it to intercoastal trade

A hearing having been held in this proceeding, pursuant to the provisions of section 805 (a) of the Merchant Marine Act, 1936, and the Commission, on the date hereof, having made and entered of

record a report stating its conclusions and decision therein, which report is hereby referred to and made a part hereof;

It is ordered that the application of the Baltimore Mail Steamship Co. be, and it is hereby, approved.

By the Commission.

[SEAL] W. C. PEET, Jr., *Secretary.*

Mr. McADOO. Mr. President, I am very happy to be able to make this announcement, because a very serious problem which has been confronting the entire Pacific coast has now been settled, at least for the time being.

PROPOSED RULES OF PRACTICE IN FEDERAL COURTS

Mr. KING. Mr. President, on the 5th day of January last I offered a resolution providing for the postponement of the effective date of the Rules of Practice in Federal Courts recently promulgated by the Supreme Court of the United States.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. NORRIS. If the Senator is about to refer to the rules, I suggest that he preface his remarks by explaining to the Senate how the rules were adopted, the original resolution by which they were authorized, and the way in which the resolution provided they should go into effect unless some action should be taken by Congress which would interfere with their going into effect. I think it would be well that Senators understood the purport of the discussion of the Senator from Utah. The Senator is speaking on a very important matter, one in which all attorneys, particularly, are vitally interested, namely, the rules which have been promulgated by the Supreme Court, and which will go into effect unless some action is taken by the Congress to prevent it. I am not particularly arguing against the rules, although I agree with the Senator from Utah that there are some of them which ought not to go into effect. At least the matter ought to be understood by Congress, and it ought to be understood that unless we do take some action on these rules they will go into effect as a matter of course.

Mr. LEWIS. Mr. President, I hope the Senator from Utah will add in his discussion a statement of what he feels will be the effect of these rules when put into execution.

Mr. KING. Mr. President, I appreciate the suggestion made by the Senator from Nebraska, and also the suggestion submitted by the Senator from Illinois. In compliance with the request of the Senator from Nebraska I invite attention to the act of June 19, 1934, which conferred upon the Supreme Court of the United States the power to prescribe, by general rules, for the district courts of the United States, and for the courts of the District of Columbia the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. The statute also provided that the rules were not to abridge, enlarge, or modify the substantive rights of any litigants. However they were to take effect 6 months after their promulgation and an important provision of the statute declared that:

* * * thereafter all laws in conflict therewith shall be of no further force or effect.

Section 2 of the act referred to provided that the rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session and until after the close of such session.

It is apparent, therefore, that these rules, with all their virtues and all of their infirmities, will become effective within 6 months after their promulgation, but they must have been reported to Congress by the Attorney General at the beginning of a regular session.

The Attorney General of the United States on the third day of January of this year did present to the Senate and the House of Representatives of the United States, rules of civil procedure which have been submitted to him by the Chief Justice of the United States on the 20th of December 1937. In the letter of transmittal to the Attorney General the Chief Justice stated:

Mr. Justice Brandeis does not approve of the adoption of the rules.

I need not say what all concede, that Mr. Justice Brandeis is one of the outstanding characters in the United States, and one of the ablest jurists who has brought distinction and honor to the Supreme Court of the United States. In this connection permit me to state that the opinion of Mr. Justice Brandeis in the Erie case handed down a few days ago, justifies the position I take, that the effective date when the rules referred to shall go into effect, should be postponed until Congress has an opportunity to examine them and their effect upon statutes which have been enacted during the past more than 100 years.

As I have indicated the rules, unless Congress shall take some affirmative act, will go into effect within a very short time. I have contended that Congress should immediately pass a measure that will postpone the effective date of the proposed rules until the adjournment date of the first session of the Seventy-sixth Congress. It is proper, therefore, in view of the importance of the questions involved and the effect of the rules upon hundreds of statutes, that Congress, through its appropriate committees, should make a thorough investigation of the rules and their relation to existing law and their effect upon procedural matters in the courts of the United States.

I might add that the late Senator from Montana, Senator Walsh, together with a number of other Senators, resisted efforts to superimpose upon the States the so-called Conformity Act. He, as well as many lawyers, were unwilling to have the Federal Government determine the rules of practice in the Federal courts in common-law proceedings. That is to say, he and they insisted that the procedure prescribed in the laws of the various States should be followed by the Federal courts within their respective States in connection with common-law actions.

I might add that the Supreme Court of the United States appointed an advisory committee to assist in the preparation of a unified system of general rules for cases in equity and actions at law, so as to secure one form of civil action and procedure in both classes of cases, and to assist the court in such undertaking it appointed an advisory committee consisting of a number of lawyers from various parts of the United States. The advisory committee was charged with the duty, subject to the instructions of the Court, to prepare and submit to the Court a draft of a unified system of rules. This advisory committee prepared rules of civil procedure for the district courts of the United States. They are found in a pamphlet which I exhibit to the Senate, consisting of 125 pages. Accompanying the pamphlet containing the rules is a pamphlet entitled "Notes to the Rules of Civil Procedure for the District Courts of the United States," prepared under the direction of the Advisory Committee on Rules for Civil Procedure. These notes are found in a pamphlet of 79 pages, which I now exhibit to the Senate.

Mr. President, believing that it would be unwise and, indeed, improper for Congress to permit these rules to become effective without examination, I offered a joint resolution, No. 281, in the Senate, on the 5th day of January, which was referred to the Committee on the Judiciary of the Senate.

It seemed highly improper that rules, which would have such an important effect upon the procedure of the courts, and indeed upon substantive rights, should automatically go into effect, and I, therefore, believed it to be the duty of Congress, through appropriate committees, to make a searching examination of the rules before they became effective. Realizing that they would become effective unless some action was taken by Congress to postpone the date when they were to go into effect, I offered the resolution referred to.

May I say that I believe that Congress would be derelict in its duty if it did not investigate the rules to determine their effect, and be in a position to certify as to the wisdom and propriety of the same. Speaking for myself, I was unwilling to permit the rules to become effective without having an opportunity to study them, and without an opportunity being given to members of the Committees of the

Judiciary of the House and the Senate as well as all members of both legislative bodies to give them appropriate examination.

The joint resolution referred to is as follows:

Whereas, by the act of June 19, 1934, chapter 651, it is provided that the Supreme Court of the United States shall prescribe by general rules for the District Courts of the United States and for the District of Columbia the forms of process, writs, pleadings, and motions and the practice and procedure in civil actions at law; and

Whereas it is further provided by said act of June 19, 1934, chapter 651, that the said rules to be promulgated thereunder shall not take effect until after the close of the regular session of the Seventy-fifth Congress; and

Whereas the rules transmitted to the Senate and the House of Representatives by the Attorney General on January 3, 1938, which purport to unite the rules for cases in equity with those in actions at law and provide in proposed rule 86 that such united rules will take effect on September 1, 1938, or 3 months subsequent to the adjournment of the second regular session of the Seventy-fifth Congress if that date is later; and

Whereas the act of June 19, 1934, chapter 651, provides that all laws in conflict therewith shall, after the rules take effect, be of no further force and effect, and rule 86 of said proposed rules provides that the united rules shall govern all proceedings in the courts in actions brought after they take effect and in all actions pending with certain exceptions.

Senators will perceive that the statute providing for the rules of civil procedure repeals by implication, if not directly, all laws which appear to be in conflict with the "united rules," though such laws may have been enacted more than 100 years ago.

I continue to read the joint resolution:

And whereas if the rules so promulgated with such provisions and under such statute are intended to have the force and effect of repealing, modifying, or superseding numerous acts of Congress now on the statute books, innumerable questions will arise as to the exact extent of the conflict; and

Whereas it is desirable that a study of such proposed rules and the laws with which they may be in conflict should be made and the conflicting provisions governing practice and procedure in the District Courts of the United States and in the District of Columbia should be brought into harmony and not be left in confusion: Now, therefore, be it

Resolved, etc., That the effective date of the proposed united rules shall be extended to the adjournment date of the first session of the Seventy-sixth Congress.

Mr. President, it will be observed that there is no intimation that the rules ought not to go into effect after full consideration; but I was unwilling, and I believe many Senators were unwilling, to give their support to a proposal which would, by implication, repeal hundreds of statutes, some of which I have examined, which were passed more than 100 years ago.

The resolution which I offered, as stated, was referred to the Committee on the Judiciary, which after consideration reported the same favorably, and it is now upon the Senate calendar. Yesterday, under the 5-minute rule, the resolution was reached, but an objection was interposed, and that postponed its consideration. It may be that in this late hour of the session, particularly when so many bills are upon the calendar, the resolution may not be passed. However, I believe it to be my duty to challenge the attention of the Senate to the rules, and to the fact that unless affirmative action is taken by Congress they will go into effect within a few days without full opportunity being given to Congress and to the people to examine them and to understand their implications. Personally, I believe that some of the rules should be modified and that material changes should be made in others. I cannot help but believe that in their present form, if they became effective, there will be great confusion in the courts, which will result in litigation, add to the work of the courts, and impose unnecessary burdens upon litigants.

I have taken this opportunity of bringing the attention of the Senate to the resolution which I offered, together with the report of the Committee on the Judiciary of the Senate accompanying the resolution when it was favorably reported to the Senate. Without taking the time of the Senate to read the report, I ask unanimous consent that it may be included at this point in my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

The report follows:

The Senate Committee on the Judiciary, to whom was referred the joint resolution (S. J. Res. 281) to postpone the effective date of the Rules of Civil Procedure for the District Courts of the United States, after consideration thereof, report the same favorably with the recommendation that it do pass.

The Rules of Civil Procedure for the District Courts of the United States were presented to the Congress on January 3, 1938, by the Attorney General.

These rules prescribe the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. They purport to unite the rules for cases in equity with those in actions at law, and will take effect upon September 1, 1938, or 3 months subsequent to the adjournment of this session of Congress. The rules are intended to have the force and effect of repealing and superseding numerous acts of Congress now on the statute books, and innumerable questions will arise as to the exact extent of the conflict.

If Congress takes no action on the proposed rules, they will take effect, leaving hundreds of laws, enacted by Congress during the past century, still on the statute books, some of which undoubtedly are in conflict with many of the provisions of the rules. The result obviously will be uncertainty as to whether the rules or the statutes are to prevail. The act under which the rules were drawn does not provide for any action by Congress, but, as indicated, merely declares that the rules shall be submitted to Congress; and, in addition, provides (or is interpreted to provide) that when adopted all acts of Congress heretofore passed, and possibly to be enacted hereafter, i. e., regulating practice in the Federal courts, shall no longer be in effect.

It is the opinion of many that this will result in great confusion and instead of simplifying procedure will greatly complicate it. It is possible that in nearly every case the attorneys will be required to ascertain whether or not they have complied with the rules and the applicable statute to see whether there are conflicts or whether there may be conflicts. This means that the attorneys must select one or the other course at their peril, and so in many cases the question will have to be submitted to the court for decision. As an example, the statute that requires that the practice in the Federal courts shall conform to the State practice (the so-called Conformity Act). Would it not be better in order to avoid confusion to repeal the Conformity Act directly and not have it nullified by some promulgation of rules of court which repeal it by implication?

As stated, the rules will soon go into effect. There has been no opportunity by the Judiciary Committee of the Senate to study the rules and their effect upon statutes; and it would seem, in view of the importance of the questions involved, that a thorough study should be made by Congress before the rules become effective. This may not be done during the few weeks remaining of the present session.

The joint resolution recites some of the reasons why the effective date of the proposed rules shall be extended to the adjournment of the first session of the Seventy-sixth Congress. If this extension is given, full opportunity will be afforded for a thorough study and examination of the rules.

For these reasons, briefly stated, the Committee on the Judiciary of the Senate recommend that Senate Joint Resolution 281 do pass.

Herewith is submitted a memorandum briefly presenting reasons in behalf of the adoption of the resolution.

MEMORANDUM

It can readily be seen that if Congress is to complete its work and establish effectively a simplified system of practice in the Federal courts combining law and equity, it should make the statutes conform to the rules. This may not be a difficult task. In many cases the statute may be amended by substituting for the special procedure outlined in the statute, a provision that the procedure shall be as provided in the rules of court. This will settle a question that is bound to be the subject of interminable litigation, that is, whether a statute is substantive law or merely procedural. If substantive law, the rules cannot repeal it for there is no authority to change substantive law. This is provided in the statute authorizing the making of rules.

But what is "substantive law" as distinguished from "practice and procedure," which are proper subjects of rules of court? Certain it is that courts may well differ on what is "substantive law" and what is "procedure" in many of the rules. Certain it is that Congress enacted numerous statutes, found in the Judicial Code and its amendments, that were considered by Congress as affecting "substantive rights" and not merely the making of rules of court.

It has been held that many steps in a trial, which have offhand seemed to be merely matters of practice, such as the matter of charging the jury whether orally or in writing, the submission of interrogatories, the submission of a special verdict, the power of a court to set aside a judgment after term, the power of a court to vacate its findings and grant a voluntary nonsuit, are none of them matters of "practice and procedure."

Many of the rules contain provisions as to which there will be interminable dispute on the question whether they affect substantive rights or are merely procedural.

All this suggests the advisability of a careful study of all the statutes that are affected by the new rules. The committee of the bar association which proposed the rules has prepared a pamphlet which contains a comment on each rule and, in most instances, a reference to the statute intended to be nullified or modified or affected in some way. This pamphlet may serve as a guide in revamping the Judicial Code so as to harmonize it with the rules and avoid a vast number of questions concerning construction. This work cannot be completed in the remaining days of the present Congress. The draft of the "comments" to which reference is made has not yet been printed in final form. The House committee has not yet printed its hearings and has not yet made a report.

It is clear that a much finer work and one more satisfactory to the bar of the country can be performed if the Congress will postpone the effective date of the new rules so as to afford an opportunity to avoid the confusion resulting from conflicts between the rules of court and the acts of Congress. The resolution suggests a date at the end of the next session. The one point it is desired to emphasize is that Congress should have an opportunity to act upon the proposals for the modifications and corrections of the statutes, instead of leaving the statutes providing for one thing and the rules of court another, because of inaction by Congress, and allowing the rules to go into effect within a few weeks.

SOME OF THE CONFLICTS AND UNCERTAINTIES RESULTING FROM ADOPTION OF THE RULES WITHOUT MODIFYING THE STATUTES

(1) Rule 26 relating to mode of proof as distinguished from "Practice and Procedure." Conflicting statute 28 U. S. C. sec. 635 (Judicial Code).

(2) Rule 57 affecting remedies. Conflicting statute 28 U. S. C. sec. 400, Declaratory Judgment Act, and see 256 N. Y. 298.

(3) Rules 38 (a) and 38 (d) affecting right to jury trial. Conflicting statute 28 U. S. C. sec. 773 Judicial Code. United States Constitution, art. III, sec. 2; 52 U. S. (11 Howard) 669.

(4) Rule 4 (f) enlarging power to issue process. Conflicting statute 28 U. S. C. sec. 112; *Toland* v. *Sprague*, 12 Peters (37 U. S.) 300.

(5) Rule 6 (c) and rule 59 (b), powers of courts after term. Conflicting statutes, see *Bronson* v. *Schutten*, 104 U. S. 410.

(6) Rule 43 (b) and rules 26, 31, 33, 34, unlimited right of discovery. Conflicting statutes, 28 U. S. C. sec. 636 Judicial Code; *Hanks, etc.*, v. *International Co.*, 194 U. S. 303.

(7) Rule 35, physical examination of persons. Conflict, see 113 U. S. 717; *Union Pacific Co.* v. *Botsford*, 141 U. S. 250; Rev. Stat. sec. 861, 863, et seq. Rev. stat. sec. 724, 28 U. S. C. 635 et seq., Judicial Code.

Mr. KING. In the early part of the present session there was transmitted to Congress in a letter from the Attorney General, printed as House Document No. 460, a document embodying rules of civil procedure for the district courts of the United States adopted by the Supreme Court of the United States. A brief survey of these proposed rules has been made by the Judiciary Committee of the House and just recently by a subcommittee of the Judiciary Committee of the Senate. Even a cursory study of these rules shows that they bring about quite revolutionary changes in the procedure and power of judges and rights of litigants, particularly in law cases to be tried by juries, and that as to such law cases they purport to supersede and affect in various ways numerous statutes of the United States heretofore enacted by the Congress from time to time since 1789.

The joint resolution (S. J. Res. 281) reported out by the Judiciary Committee represents an effort by Congress to deal affirmatively with this situation and act on the rules and statutes rather than have the laws of the United States changed by inactivity of the Congress.

Mr. BROWN of Michigan. Mr. President——

The PRESIDENT pro tempore. Does the Senator from Utah yield to the Senator from Michigan?

Mr. KING. I yield.

Mr. BROWN of Michigan. I wish to give the Senator from Utah an example of hasty action in adopting rules, the matter he was just referring to. There is now in effect a rule providing for a depository bond, a rule which the Supreme Court adopted in 1937, a year ago, and yet under the statutes governing national banks, no national bank is authorized to put up a depository bond. It seems to me that situation was rather poorly and hastily considered. No national bank can accept a deposit of the kind referred to in the rule, because it cannot legally put up security, and the Supreme Court has so held. In the last 4 years our banking legislation in this respect has been based on the proposition that special secured deposit accounts should be eliminated and all depositors placed on the same basis.

Mr. KING. Mr. President, the illustration given by the Senator from Michigan demonstrates the unwisdom of hasty and improvident legislation. Many laws thus enacted cause confusion and often serious injustice to individuals and communities. Senators know that thousands of bills are introduced at each session of Congress. Hundreds of the bills are passed, many of which have received but little attention and failed to meet conditions which it was designed they should remedy. Many acts are declared unconstitutional and we are not infrequently confronted with the fact that situations which ought to have been anticipated in the consideration of proposed legislation, were not properly guarded against or provided for, and the results were disappointing and indeed in many cases harmful if not disastrous to individuals and communities.

Mr. CONNALLY. Mr. President, the Senator is discussing the rules promulgated by the Supreme Court?

Mr. KING. I am bringing the attention of the Senate to the rules and the steps which were taken in their formulation and in their presentation to the Senate. I shall not take the time of the Senate to discuss these rules; indeed, it would require hours to do so. It is my purpose merely to call attention to the rules; their effect upon judicial procedure and the confusion which will inevitably result and the unwisdom of Congress by its silence approving these rules. If the rules are to be submitted to Congress then the duty rests upon Congress to examine them with the utmost care before it places its seal of approval upon the same. I think it would be to the discredit of Congress, by its silence, its inaction, to place its seal of approval upon these rules which affect the individual and property rights of millions of American citizens.

Mr. CONNALLY. Exactly. Let me ask the Senator if that point is not accentuated now by the recent decision of the Supreme Court in overruling the old Tyson case, in which it is now laid down that the Federal courts must follow the laws of the States in the several jurisdictions, rather than the old decision, which was by Mr. Justice Story, I believe, which announced a general law that applied everywhere? If the courts are bound to follow the practice in each State, and the law of each State, is not that course out of harmony with hard and fast, uniform, standardized rules of practice?

Mr. KING. Absolutely.

Mr. CONNALLY. Is not that circumstance an added reason why we should postpone the approval of these rules until the next session of Congress?

Mr. KING. The Senator has stated a cogent reason for that course. May I say that Mr. Justice Brandeis, who refused to assent to the promulgation of the rules, wrote the opinion in the Erie case. That opinion, in the judgment of some, further confirms the view that rules are in conflict with many statutes.

Mr. CONNALLY. I think the recent decision, going back to the original doctrine, is a very important one, and a very wise one.

Mr. KING. I think so.

Mr. CONNALLY. I think we ought to sustain the Court in that attitude as far as we can.

Mr. KING. It seems to me that Mr. Justice Brandeis has admonished us that ours is a dual form of government; that the States have rights; that there have been too many transgressions upon the rights of the States, and there has been too much centralization of authority and power in the Federal Government. He has admonished us in that decision that the rights of the States are not to be disregarded.

Mr. CONNALLY. Is there not also another important aspect of the matter? One plaintiff may not be able to get into the Federal court in Missouri, we will say, or in Nebraska. So he is bound by the laws of the State; and if under the laws of the State there is no liability on the part of the defendant, the plaintiff has no recourse. Another

plaintiff, who, by some rule, can bring his defendant into a Federal court under the old practice, might recover under the same state of facts. That situation tends toward lack of uniformity, inequity, and injustice as between litigants.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. BURKE. The decision of the Supreme Court in the Erie case, to which reference has been made, has to do only with substantive law. It has nothing to do with procedure.

Mr. KING. I am not so sure that the decision can be so circumscribed as to mean that it relates only to substantive law.

Mr. BURKE. The common law relating to substantive rights, as determined in each State, is the law in that State, and not what some Federal judge may think about it. The rules of procedure promulgated by the Supreme Court have nothing at all to do with substantive rights, and relate only to procedure, in the interest of the orderly trial of lawsuits.

Mr. KING. Mr. President, I do not quite agree with my friend. It is not always easy to draw a line between what might be called procedural rights and substantive rights; they are so blended and commingled that controversies often arise in determining what is procedural and what is substantive. Those who are familiar with the laws of code States will, I am sure, agree with this view. Many cases find their way to the appellate courts growing out of controversies over procedural questions; and as indicated, there is such an overlapping, or, if I may use that expression, integration of procedural and substantive rights, as to result in confusion and too often, expensive and prolonged litigation.

I know of the difficulties which have arisen in code States in drawing the line between procedural and substantive matters; and a review of the decisions of the appellate courts will reveal the intricate and complicated questions presented for consideration in determining whether a procedural right only has been infringed, or substantive right has been denied.

Professor Keigwin, who has had many years of practice as a lawyer and as a professor and writer, indicated some of the problems involved in interpreting the rules and in applying them to the questions to which they relate. He refers to the English Judicial Act which went into effect in 1878, and in the course of 15 years, as he was advised by Professor Hepburn, the English courts decided 4,000 cases touching on points of procedure, purely on the construction of the act and the rules formulated thereunder. He further states that Justice Stewart in 1887 observed that the reports seemed to be filled with cases on points of procedure which he thought were unnecessary, and that if one followed the cases following 1834 for 10 or 15 years, he would find a considerable proportion of cases on procedure. He further added that in the same way, the code reform in 1848 showed a great flood of decisions on mere points of procedure.

And, as I have indicated, lawyers know the difficulties they have encountered in determining where the line of demarcation is drawn separating procedural matters from substantive rights. If time permitted, I could point to many instances where there was such a commingling of procedural matters and substantive rights and law, that controversies protracted and bitter resulted, and expensive and costly litigation resulted.

I recall that Professor Keigwin further stated that he had occasion to look for cases on pleading which he might use in compiling a case book for his classes, and he examined the current monthly digest published by the West Publishing Co.; and there he found every month a dozen or twenty cases from the code practice and it was not difficult to find a case dealing with points of procedure in the matter of common law.

But I must hasten along, Mr. President.

The propriety of some affirmative action by Congress, instead of leaving the rules to impair and seriously affect statutes of the United States by mere silence and inaction by Congress, becomes at once apparent when the circumstances and authority under which the rules were reported to Congress for its consideration are examined. As the statute under which the rules were made is short, and its full import is important to a consideration of the joint resolution, I deem it proper to read it at this time. It is as follows:

Be it enacted, etc., That the Supreme Court of the United States shall have the power to prescribe, by general rules, for the district courts of the United States and for the courts of the District of Columbia, the forms of process, writs, pleadings, and motions, and the practice and procedure in civil actions at law. Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant. They shall take effect 6 months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect.

SEC. 2. The Court may at any time unite the general rules prescribed by it for cases in equity with those in actions at law so as to secure one form of civil action and procedure for both: *Provided, however*, That in such union of rules the right of trial by jury as at common law and declared by the seventh amendment to the Constitution shall be preserved to the parties inviolate. Such united rules shall not take effect until they shall have been reported to Congress by the Attorney General at the beginning of a regular session thereof and until after the close of such session.

It will be observed that this statute is concerned primarily with the making of rules in actions at law to be tried by juries. So far as suits in equity are concerned, the enabling act permits merely the combining of the proposed new law rules with the equity rules already made, but does not authorize the making of equity rules. The authority to make equity rules was given nearly a hundred years ago in the act now on the statute books as section 730 of title 28 of the United States Code. The statute of 1842, as amended, gave the Supreme Court the power to prescribe the forms of writs and other process, the modes of framing and filing proceedings and pleadings, of obtaining discovery, entering decrees, and of proceedings before trustees in all suits in equity in the district courts of the United States, but specifically provided in no uncertain terms that such rules should not be, in any manner, "inconsistent with any law of the United States."

The authority for the new rules now before us relating to law cases does quite a different thing. Instead of providing that the laws of the United States on the subject should not be repealed or modified, the enabling act upon which the new rules are promulgated provides that when they take effect "all laws in conflict therewith shall be of no force or effect"; that is, shall be considered repealed.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. MINTON. After the rules are adopted, if the Supreme Court desires to amend the rules, Congress has nothing to say about it.

Mr. KING. I think that statement is correct. It might very well be stated that we are improperly delegating and surrendering legislative authority.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. BURKE. Has any real abuse or harm been caused by the fact that for a hundred years the courts have had the right to make equity rules, as the Senator stated? Has not that fact worked out to the very great advancement of orderly procedure?

Mr. KING. Undoubtedly equity rules are necessary; but the Federal authority to prescribe equity rules specifically states that they must be conformable to law. In the present instance the reverse is true.

Mr. BURKE. The fact that the court could at any time change the equity rules without Congress having anything to say about it has not worked to the disadvantage of any litigant in the country, has it?

Mr. KING. The Senator may have been more fortunate than some of us who have practiced law. He may not have had occasion to challenge what some of us believed was an abuse of authority under the equity power of the court and under the equity rules which had been promulgated. However, I do not have time to enter into a discussion of the equity rules and the resulting benefits and evils and injustices following their interpretation and application.

Mr. NORRIS. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. NORRIS. Does the Senator have before him a copy of the rules?

Mr. KING. Yes.

Mr. NORRIS. I think he ought to exhibit the volume to the Senate, so that the Senate may gather some idea of the number of them.

Mr. KING. I thank the Senator. I have the rules before me. They are found in a volume of more than 100 pages. I shall be glad to have Senators examine them, and I am sure that such examination will result in uncertainty as to their meaning and skepticism as to the effects of their attempted application by the courts.

If Congress is to take no action whatever on this subject and is to remain silent when this proposed alteration of the statutes of the United States is reported to it, then on September 1, the date fixed by the rules, all the laws of the United States affecting the rights and powers of litigants in United States courts in jury cases are wiped off the statute books so far as they conflict with the rules reported to Congress. This is done not by a legislative body impliedly repealing its own statutes, but by another branch of the Government, which admittedly has no legislative power to repeal, amend, suspend, or modify statutes.

It seems to me that some of us who have contended for judicial supremacy ought to scrutinize very carefully proposed legislation or rules which supersede statutes and interfere with judicial process.

Mr. BROWN of Michigan. Mr. President, will the Senator yield?

Mr. KING. I yield.

Mr. BROWN of Michigan. If, as indicated by the Senator from Indiana the court can amend the rules without approval by Congress, why should we not write into whatever legislative action we take in approval of the rules a provision preventing the amendment of the rules without the approval of Congress?

Mr. KING. Mr. President, that is a wise suggestion; but we are now denied the opportunity, because the rules go into effect soon after we adjourn; and I have serious doubt as to whether we would be able to amend them in those instances in which we have learned by experience and from investigation that they contain provisions which militate against the rights of litigants or interfere with the rights of States themselves, or encroach upon the proper authority of the courts.

This is more than repeal by implication. It is something unheard of in the history of legislative bodies. It would be sanctioning by silence repeals by others not having legislative powers, and outside of legislative halls, without Congress even knowing or being informed of the laws which are thus erased from the statute books by implication. It would be abandonment of the function of Congress to legislate; for it is as much the duty of Congress, and Congress alone, to change the laws and to repeal the laws as it is to enact the laws. The duty of Congress to decide for itself whether laws should be repealed is so clearly a part of the warp and woof of our Constitution that it is idle to say that the performance of this duty may be excused because of the eminence of the gentlemen who have formulated the implied repeals and the long study which they have given to the subject.

And what are these laws—statute law and common law—which are thus to be cast aside, without any consideration by the law-making body? They affect the finest achievement of our American judicial institutions—the preservation, on the one hand, of the common-law trial by jury in the great volume of ordinary litigated cases, and, on the other hand, permitting the exercise of the equity powers by the judge alone in those exceptional cases where jury trial is, by the very nature of the relief sought, inappropriate—a dual system, each with its own safeguards provided by statutes directly or by affirmance of common-law principles.

But I can see at once that many who have not considered these rules and who assume that they do not affect statutes, even though authority to do so was given, are saying that we are taking counsel of our fears, that this is a mare's nest, and that no such thing will happen. Let us consider this, and get at the base of the proposition. As it is generally known, the rules of procedure in Federal courts were prepared by a committee of lawyers before they were submitted to the Supreme Court. This committee from time to time prepared notes, principally relating to the source of the rules and their effect upon statutes of the United States and former rules in equity. We now have those notes put in final form and applied to the rules as now promulgated.

I thought I had the notes on my desk but, unfortunately, I left them in my office. In the appendix to this document of notes prepared and printed under the direction of the advisory committee on rules for civil procedure will be found a list of the statutes of the United States, that is, sections of the United States Code, to which references are made in the notes. The statutes so referred to are some 400 in number. Of course, many of these statutes are not overruled by the new code of rules, but are merely referred to as statutes of the same import or statutes which are continued in force by the rules, but on the other hand there are very many of these 400 sections that are admittedly either superseded or modified by the rules.

At the very beginning of the notes on page 2 there is a comment that rule 2 taken in connection with other rules modifies United States Code, title 28, section 384—Suits in Equity, When not Sustainable—and supersedes title 28, sections 724, 397, and 398.

Rule 3 is said to vary the operation of the statute of limitations.

Controversies will inevitably arise in the interpretation of that statute. My friend talks about substantive rights, but the statute of limitations is not merely a question of procedure but involves substantive rights. Yet this proposal tampers with that important phase of our judicial process.

Rule 4 is said to supersede title 28, sections 721 and 722, and modifies title 28, section 503.

Rule 7 is said to modify title 28, section 45.

Rule 8 is said to supersede the methods prescribed in title 19, section 508.

Rule 26 relating to obtaining testimony other than at the trial in open court is said to modify title 28, section 639, 640, 641, 644, 646, and 643.

Rule 28 is said to be substantially like section 639; that is, these notes say it is substantially like section 639.

Who is to determine? That would be a source of litigation. As I said a moment ago, these rules will be provocative of litigation. Attempts will be made to interpret the rules, whether they supersede and in what respect they supersede and in what respect they collide with existing law, procedural law as well as substantive law.

Mr. MINTON. Mr. President, let me ask the Senator whether the Supreme Court wrote these rules or whether the American Bar Association wrote them and the Supreme Court approved them?

Mr. KING. The Supreme Court did not write them. As I said a moment ago, one of the ablest Justices of the Supreme Court, Mr. Justice Brandeis, who is deeply interested in human rights and in the protection of the States refused to approve of them. They were prepared by a committee, as I have stated. Major Tolman took an important part, and the former Attorney General, Mr. Mitchell, who testified before the committee, played some part, but I do not know how important it was in their formulations. If Senators will read his testimony they will ascertain from his own words what contribution he made to the preparation of the rules.

Mr. BURKE. Mr. President, will the Senator yield at that point?

Mr. KING. I yield.

Mr. BURKE. It is a fact, is it not, that, after the Supreme Court had taken the initiative in the matter and designated the committee, committees, selected by local bar groups, were formed in every judicial district in the United States, to study the proposals and were in almost continuous session,

meeting frequently as the proposed rules were submitted; and that in every county in the United States lawyers who had been through the mill and who had experience in the trial of cases and knew the errors in procedure and how justice could be expedited, gave their best thought to the promulgation of the rules, and, in overwhelming numbers, supported the proposal that we now have before us?

Mr. KING. Some of us complained about adding to the number of Justices on the Supreme Court and said that the more we had the greater would be the confusion. When thousands of lawyers—and my friend goes down, I presume, into the precincts and counties of every State—monkey with this delicate matter, trying to deal with it and trying to formulate rules, confusion is inevitable. I have great respect, of course, for bar associations; I myself am a lawyer, though I do not know how much of a lawyer I am now since entering the legislative field, but I am unwilling, I do not care how able lawyers may be, to abdicate my functions and my duty as a legislator and let them prescribe rules and laws which, in effect, supersede hundreds of statutes of the United States. I want a chance, at any rate, under my oath of office, to examine and to see whether their work is satisfactory. That is all I am asking for myself and for those who have a responsibility in this matter.

Mr. BURKE. Mr. President, if the Senator will yield further, let me ask him did he vote for the act of 1934 under which the rules were formulated and were to go into effect?

Mr. KING. I have no recollection, I will say, that I did. If I did, it was one of the serious indiscretions and errors upon my part as a Senator of the United States. I am not perfect, by any means, and neither is my dear friend from Nebraska. As I have said, I joined with my friend, Senator WALSH, and we fought for years against the imposition upon the States of a statute which I felt then as I feel now was not justified.

Rule 28, as I have said, is said to be substantially like section 639. An examination will show that it is not.

Rule 30 is said to follow the equity rules—I am speaking now from the notes—but it is not stated what effect it has—this is my interpolation—on statutes relating to law cases which require testimony in open court, with few exceptions.

Rule 31 is likewise an equity rule, and its effect on statutes relating to law cases is not stated. This is true also of rules 33 and 34.

Rule 36, on admission of facts in documents, a thing unheard of heretofore in any law case, is not commented on as to its effect in changing the law in jury cases.

Rule 37, relating to control of the judge over the conduct of the parties and punishment of the parties by arrest, applies an extended equity practice to law cases. What laws of trial by jury it affects can hardly be overestimated.

Rules 38 and 39, requiring demand for jury trial on penalty of waiver, are said to modify title 28, section 773.

And so on. I will not take the time to examine each of these rules and to show the many sections of the statutes which they supersede or modify or are alleged to modify and the different contentions which have been made and will be made in trying to interpret them in their relation to substantive law as well as to procedural matters.

I desire to mention the outstanding feature of the rules by which they seriously modify the rights of litigants and power of the judge in actions at law for jury trial as such trial was known at the common law. This is done principally by rules 26 to 37 relating to procuring testimony and discovery in civil actions, which make the most radical change in the customary method of conducting trials in actions at law as distinguished from trials of suits in equity. These proposed rules, if they are, as they purport to be, superseding the statutes will bring about a most vital change from the jury trial "as at common law" referred to in the Constitution. For these rules transfer bodily to law cases all those powers of the court over the person and conduct of the parties to the litigation which we are familiar with heretofore as existing only in equity suits, such as what is known as discovery; that is, the interrogating of the other party not in the presence of the jury and not according to the rules for taking depositions after showing the necessity therefor; inspection of the premises of the parties; physical and mental examination of the parties by order of court; reference to a master to take the whole case, as is permitted in equity, and try it out, and make a decision before the case is submitted to the jury.

All of these provisions interfere with a proper concept of the trial by jury. They constitute an effort to bring about a condition in which those of us who believe in the jury system will be compelled to treat court proceedings as if we were in a court of equity, and the atmosphere and spirit of the equity procedure will prevail, rather than the common-law spirit as it relates to jury trials.

No one can contemplate this transfer of all the incidents of an equity suit to the common-law action before a jury without realizing beyond peradventure that they do affect, modify, amend, or repeal the statutes of the United States and remove the safeguards found in those statutes, particularly the safeguard which continues the restrictions and limitations of State procedure in law cases now held by the Supreme Court, in a recent decision known as the Erie Railroad Co. case, to be necessary to the preservation of the separate sovereignty of the States—a decision, by the way, which was rendered since the rules were promulgated, and since they were submitted to Congress, and since the hearings were held in the House.

I do not see how we can avoid the responsibility of determining for ourselves what statutes affecting the rights of litigants in law cases should be repealed, what statutes should be modified, and what statutes should be amended, or whether there should be such further restrictions on the rules as will make it perfectly clear that the statutes which it is not desired to repeal or modify may remain in force as not intended to be abrogated by the rules of court.

But it is said that combining the rules at law and in equity constitutes a forward step on which the bar of the country has been working for many years, and that if the effective date of the rules is postponed now they may never be enacted, and the chance of this great reform will be lost. I do not think any such argument has any place in the legislative halls. If it is our duty to consider these rules, if it is our function to determine the extent of repeals and to determine whether we want to impair our trial by jury as it was known at common law and as it is expressly continued by the Constitution in all Federal courts, we cannot justify waiving that duty and function because we have not had time at this session to go into the matter, and because it will take a little more time to complete this distinctly legislative task which the legislative body, and it alone, can perform.

If these rules are so important, to postpone their operation for only a few months so that we may acquaint ourselves with their full significance will not prevent their enactment into law if they should receive legislative approval. Indeed, if we find that the rules are proper, a full examination will hasten their consideration at the next session of Congress. I may say that we have lived for years without these rules, and I do not think justice will be denied if we wait for a few months before the rules go into effect.

There are some persons who prefer to take the word of somebody else as the basis of their action. That is all right; but when there is a responsibility resting upon me, I want to know whether a given course is right or whether it is wrong; and in a matter affecting our judicial system, the courts in every State of the United States, it seems to me that the lawyers here, who will be criticized if the rules are improper and who will be praised if they are just, should desire to know just what they are, and their effect, before they give them the seal of their approval.

Mr. CONNALLY. Mr. President, will the Senator yield?

Mr. KING. I yield to my friend from Texas.

Mr. CONNALLY. If this matter were delayed until the next session of Congress, would it not be possible for the Judiciary Committee to assign a subcommittee to make an intensive study of the rules, and be in position intelligently

to advise Congress at the next session, much more so than at the present time?

Mr. KING. The Senator's question answers itself. Certainly; and I know that a number of Senators upon the Judiciary Committee have suggested that if we postpone the effective date of these rules, the Judiciary Committee will examine them through a committee, and will be ready to make its report at the next session of Congress.

It is said again that the enabling act under which the rules are made carries its own corrective, because it says that the rules so far as they affect law cases shall not abridge, enlarge, or modify substantive rights of any litigant, and that the trial by jury "as at common law" shall be preserved inviolate. But what are the substantive rights of litigants, and what is the substantive law applying to litigants, and what are the incidents of a trial in a law case that make it a trial by jury "as known to the common law"? Congress has from time to time enacted statutes with reference to trials by jury in Federal courts provided for by the Constitution. Congress has enacted, since 1789, many statutes preserving the substantive rights of litigants in actions at law. Some of them have been procedural in character, and yet they have become substantive, because they inherently related to individual rights as known at common law. One of the outstanding statutes is that which says that the extraordinary remedies in equity shall never be used in a lawsuit; that is, that the equity suit may not be proceeded with when there is a plain, adequate, and complete remedy at law. If that is a substantive right as well as a statute on procedure, then we are confronted with the question whether it shall be repealed.

No one can decide that question but the Congress; for it is its function, as I have repeatedly said, and its function only, to repeal laws. The courts cannot do this. The net result of this thought—which I might well expand, but which I shall not stop to do—is that in saying that the rule-making authority shall not abridge substantive rights, and at the same time that it may repeal all laws in conflict with the rules, is to say at one place that the rule-making body may repeal laws, and in another place that it may not repeal laws. To say the least, this is to introduce confusion—unnecessary confusion—simply because Congress does not take the time to perform its function as a legislative body in determining the continuance, modification, or repeal of laws.

Finally it is said that these rules, having been derived from such a source and having been considered by men of such eminence, ought to be tried out so that we may learn by experience what laws should be repealed and what laws should be continued. I respectfully suggest that in such a serious matter as bringing about the mass of litigation that such confusion and uncertainty will produce in our Federal courts throughout the country while we are acquiring this experience through a period of years, no such suggestion ought to weight with Congress to induce it to evade the responsibility of preventing this probable chaos.

If the rules are a model, and the statutes which conflict with them are outmoded, but yet remain on the statute books as substantive law which cannot be affected by the rules, and further remain on the statute books as laws which are superseded insofar as the rules may supersede them, we have, indeed, a curious kind of model when the rules and the statutes are taken together, as they must be.

Why give up the hope in this or any other legislation that Congress may perform its functions of legislating for the people of the United States and determining what laws should be repealed because they do not fit in with a model suggested?

In the case of no other law before Congress would this idea of experimenting to see what will happen be considered for a moment. Why not take a few months to perfect the model, rather than wait a long period of years to see what the model is, and what part of it is law and what part of it is rule?

I believe, therefore, that a joint resolution permitting Congress to take the time to give real consideration to the rules of court and their effect upon the statutes of the United States is in accord with the best traditions of the Congress, if, indeed, it is not required by the constitutional powers conferred on Congress, and withheld from other branches of the Government.

For what purpose were the rules required to be reported to Congress? For what purpose are we advised in advance that the rules may and do affect, supersede, and modify statutes of the United States? Merely to keep silent, and have someone else make the laws for us? I think not. I think we must assume the task.

This view, it seems to me, is much strengthened when we consider the alternative. As the matter now stands, if Congress is merely silent, we will have one body of rules applying to law cases and equity cases indiscriminately, having the force and effect of law governing trials in Federal courts, which, as to equity proceedings, cannot affect, modify, or repeal the laws enacted by Congress, and as to law cases, do purport to supersede laws of Congress on the subject. And thus, without more, under the guise of attaining simplicity of practice in the Federal courts, we will have successfully scrambled the eggs, if I may use a common expression, which it will take years of litigation, with consequent endless confusion, to unscramble.

Mr. President, I wish I had time to read some of the testimony of the able professors and lawyers who appeared before the Judiciary Committee in support of the position I am taking.

I apologize for having trespassed upon the Senate, but I believe this question is so important that our attention should be directed to it. I believe that I would be derelict in my duty, believing, as I do, that these rules should be considered by Congress before they go into effect, if I did not challenge the attention of my colleagues to them and to their effect and to the results which will follow in a few weeks, unless the resolution shall be agreed to.

I ask permission to insert at the close of my remarks a few statements made by Professor Keigwin and the statements of several witnesses who testified before the Committee on the Judiciary.

There being no objection, the matters were ordered to be printed in the RECORD, as follows:

TESTIMONY BEFORE THE SUBCOMMITTEE OF THE JUDICIARY COMMITTEE POINTING TO POSSIBLE INFRINGEMENTS UPON SUBSTANTIVE RIGHTS OF LITIGANTS IN THE NEW RULES

Mr. KING. Mr. P. H. Marshall, a member of the bar of the District of Columbia, stated:

The act of Congress provided that these rules should neither abridge, enlarge, nor modify the substantive rights of any litigant. I hope to be able to make this committee believe that the Supreme Court, in promulgating these rules, exceeded the authority conferred upon it by Congress. I cannot believe it has not. The committee would not listen to me to go through a detailed consideration of all these rules, but I will select some of them about which I should like to speak briefly.

There is a rule, No. 34, which is found on pages 45 and 46, which provides that "upon motion of any party showing good cause therefor and upon notice to all other parties, the court in which an action is pending may (1) order any party to produce and permit the inspection and copying or photographing, by or on behalf of the moving party, of any designated documents, papers, books, accounts, letters, photographs, objects, or tangible things, not privileged, which constitute or contain evidence material to any matter involved in the action and which are in his possession, custody, or control."

The point I have particularly in mind is that the court may "order any party to permit entry upon designated land or other property in his possession or control for the purpose of inspecting, measuring, surveying, or photographing the property or any designated relevant object or operation thereon."

In reference to this particular rule, I was taught in law school that a man's house was his castle. I have always understood that the rights of the security of the home was one of the most fundamental rights that the citizens of this country enjoy, and that right could not be taken away from a citizen except by process of law. A law officer might enter with due process, of course. But how a court, be it the Supreme Court of the United States, for which I have the highest regard and respect, under an act which authorizes it to promulgate rules of procedure and expressly prohibits it from adopting any rule which will either abridge, enlarge, or modify any substantive right of a litigant, can by a rule deprive me of the privacy of my home, because somebody hauls me into court in litigation, is something I cannot understand. The moving party may bring me into court and say:

"I installed certain plumbing fixtures in your bathroom, and you have not paid for them. You claim they were not according to specifications. I want to go in there and photograph them, and I have got an order of the court to do it."

There is another rule that was adopted by the Court, with the limited authority given to it by Congress. That is rule No. 35, which may be found on pages 46 and 47. That rule provides that:

"In an action in which the mental or physical condition of a party is in controversy, the court in which the action is pending may order him to submit to a physical or mental examination by a physician. The order may be made only on motion for good cause shown and upon notice to the party to be examined and to all other parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made."

Now, the question arises, may a court, when Congress has said, "You may not pass any rule which will in any manner affect or abridge the substantive rights of a litigant," by rule require a litigant to submit to a physical examination? If so, then what I have always understood to be the substantive law of the land, the security a man has of his person, is a mere procedural matter and is not a substantive right at all. Can it be possible that my right to privacy is a mere procedural matter? The Supreme Court of the United States, when that question was before it in a case which is cited in the notes that accompany these rules, held that an order made by a judge in a State requiring the defendant to submit to a physical examination was far beyond the power of that court, and excoriated the judge for making such an order. It said that to compel a person to submit his body to a physical examination against his will was an assault and a trespass upon his substantive rights.

Here, for example, take rule No. 13 on page 18. Under that rule permissive counterclaims are provided for. It is also provided in that rule that a counterclaim which arises out of the same transaction upon which the suit is brought must be pleaded as a defense, or that suit will be abandoned, although the statute of limitations may provide that that countersuit may be brought within 3 years, or perhaps 6 years, from the time the cause of action accrued. The other suit may be filed within 3 weeks. If that be a valid rule, then it takes away from the counter claimant the time allowed him under the statute of limitations to file his suit against the other man.

Now, it seems to me that is a change in the substantive law. The statute of limitations is a substantive law. It says that statute is a complete answer and defense to a suit. That is all you need to say. When you say to a man who, under that statute, has 6 years in which to file a claim, that, because another man has sued him, he may have only 1 year or 6 months, you are certainly affecting his substantive rights under that statute, because you are depriving him of the time the legislature has fixed within which he may file that suit. It seems to me that changes the substantive law.

Mr. Kahl K. Spriggs, a member of the bar of the District of Columbia, submitted a memorandum for the consideration of the committee in which he pointed out various rules which, in his opinion, have to do with substantive rights. The memorandum stated, in part:

Rule 2 provides for one form of action to be known as a civil action. On the surface, this rule seems only to modify the form of procedure; to unite the law and equity courts insofar as the mere question of procedure is concerned; to provide for the calling of a suit in equity and an action at law a "civil action." In short, the surface import of paragraph 3 of the notes of the committee (p. 2) is that the mere forms of action and procedural distinctions have been abolished. In reality, however, the rules vest equity powers in the court in actions at law as well as in equity. It would be supposed that a litigant was not entitled to invoke the equity powers of the court under the new system of pleading where he was not entitled to invoke them in a suit theretofore in equity. If, therefore, the matters alleged in the complaint now known as a civil action would not afford a litigant equitable relief measured by the principles obtaining in equity, he ought not to be entitled to such relief under the new proposed rules. (See *Armstrong Cork Co.* v. *Merchants' Refrigerating Co. et al.*, 184 Fed. (C. C. A.) 199, 204.) Such is the law of Congress as it now stands.

The committee, however, have frankly stated in the first sentence of paragraph 1, page 2, of their notes pertaining to rule 2 that it modifies title 28, United States Code, section 384. To what extent this modification applies is not clear. Section 384 states that suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law. A careful study of the new rules shows that under them the court in law actions will have equitable powers, including those over the person, which heretofore had been exercised in equity only and under special circumstances and surrounded by safeguards grown up in conjunction with the practice in equity.

In abolishing the forms of procedure, the substantive jurisdiction and powers of a court of equity may not be conferred upon a court of law under the authority given by the statute authorizing the promulgation of the new rules. In the suits to which reference has been made in the notes of the committee under rule 2, it is to be observed that the provisions for a single action and mode of procedure arise under statutes of the States. Even if Congress is competent to enact all of the provisions found in the new proposed rules, this it has not done, and under the guise of promulgating new rules substantitve legislation cannot be enacted in this indirect manner.

Rule 7 forbids a pleading by the plaintiff to a plea of confession and avoidance, to a plea of new matter, or to any pleading described under rule 8 (c) as affirmative defenses. For example, in any ordinary suit upon a promissory note if the defendant pleads the statute of limitations the plaintiff need not reply, but presumably could rely upon whatever evidence he might be able to produce at the trial to offset the objection of the statute. The defendant would not know until the time of trial whether plaintiff was relying upon alleged acknowledgement of the debt, or part payment, or absence from the jurisdiction. In *French* v. *District Title Insurance Co.* (75 Fed. (2) 650) the Court said that the statute of limitations in the District of Columbia in law actions cannot be raised by demurrer (nor can it be under the new rules. See rule 8 (c)), even where the declaration showed on its face that the statutory period had expired, the reason being that plaintiff is entitled to an opportunity to avoid the bar if he can by replication.

The proposed rules do not provide for definite issues to be raised by the pleadings, and thus to secure the just, speedy, and inexpensive determination of every action. Surely in pleadings, at least, where the parties are not put to any great expense either of time or money, except in the investigation by the attorneys of the real issues of the case, the parties should be held to a fairly accurate presentation of the points in controversy. There is a greater loss of time and expense occasioned by the failure to have pleadings in proper shape and by the lack of preception by respective attorneys of the merits of a case as disclosed by the pleadings than any other single thing. If looseness in pleading is condoned, and even invited, ideal justice will not be attained. The opportunity for surprise afforded by rules allowing laxity of pleadings does not make for speed or simplicity. The proposed rules presume that each litigant knows perfectly well all the contentions of the other side, and that it is only necessary to state in pleadings mere general allegations that the plaintiff claims something of someone and the defendant then may deny this claim. The appendix of forms attached to the rules clearly indicates this. (See especially Form 9 on p. 109, which would now be insufficient in any court of law.) It must be observed that a plaintiff under almost any form of action has from 1 to 3 more years to work up his case. This should be sufficient time to enable him to state with some degree of precision the gravamen of his complaint. The defendant has less time, but with diligence can usually meet the issues within the time prescribed by the rules, and if necessary can secure whatever extension may be necessary. It is elementary in all pleadings and practice that facts should be opposed to each other, or issues should be opposed to each other. Under the proposed rules of pleading neither system is adopted. If order is to be brought out of supposed chaos it cannot be done by having the new order result in greater chaos.

Rule 16. It is difficult to determine just what exactly rule 16 is intended to accomplish, or what the mechanics of it will be. The dockets of almost every Federal court in the land are congested. The courts are behind in the trial of cases already at issue, and upon which the respective litigants are anxious to go to trial. The courts are busy taking care of such cases and deciding those already before them.

The court is given authority in its discretion to direct the attorneys for the parties to appear before it for a conference to consider the simplification of the issues and it is hardly to be assumed, from what has been said, that the court will "with panoramic eyes and microscopic view" search its dockets to determine what cases ought to be simplified. The attorney for one of the litigants, ex parte, by this rule is invited to see the court, discuss the case, and suggest that the other side be called in and an effort made to obtain as much concession as possible; or, the court itself in a case involving political or social ramifications, may, because of predisposition, decide to take the matter in its own hands and extract, by virtue of its position or through moral persuasion, admissions or concessions which may militate against the right of clients. Under rule 11 the pleadings in a cause represent certifications by the respective attorneys that there is good ground to support them. In short, each attorney believes that the things stated in the respective pleadings are necessary and material to the proper disposition of the case. In good faith a defendant and his attorney admit those allegations in the plaintiff's pleadings which are true, and deny those which they controvert. The present law does not permit the court to turn the function of its office of an impartial adjudicator of the law, into a mere moderator or arbitrator. In the modern practice counsel agree among themselves as to what proof may be dispensed with and what documents may be admitted without formal proof.

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Rules 26 to 37, inclusive—rules relating to depositions and discovery—apparently affect substantive rights (*Union Pacific Railway Co.* v. *Botsford*, 141 U. S. 250).

Twenty-eighth United States Code, section 636, affords all full and legitimate use of discovery necessary in law actions, and the extremely wide latitude permitted under rules 26 to 37, as admitted in the committee notes, bring about an unnecessary conflict with the desirable restrictions placed by Congress on the exceptions to trial in open court.

Rule 26 goes further, it is believed, toward permitting a "fishing expedition" to be indulged in concerning matters which may or may not be admissible in evidence than has ever been sanctioned by Congress in a jury action.

Rule 30. Here an important right has been taken away, namely, that of taking depositions orally, without being subject to the discretion of the court. Under the present statute (28 U. S. C., 639) a party may take depositions orally upon reasonable notice.

Under the rule 30 (b), the court has discretion to require that depositions be taken on written interrogatories. In *Henning* v. *Boyle* (112 Fed. 397) the Court said the method of taking testimony by commission is cumbersome and unsatisfactory, and not resorted to when the convenient method of taking proof prescribed by 863 Revised Statutes (title 28, 639) is available. Moreover, under rule 31 (d) the court has discretion to require that depositions which may be taken on written interrogatories shall be taken orally. This is another instance in which the discretion of the court is substituted for the plain mandate of the statutes.

Section 639 of the Judicial Code recognizes that litigants are the best judges of how the case should be conducted, and whether the exigencies of the case require the taking of oral testimony.

Rule 33 permits litigants to go far beyond bounds in jury actions. In addition to permitting equitable remedies in law actions, the rule transcends even the widest latitude allowed under the present Federal equity rules. The committee notes say this rule restates the substance of equity rule 58. A mere reference to that equity rule shows that the interrogatories must pertain to the discovery by one party to the other of facts and documents material to the support or defense of the cause. This safeguard and restriction is omitted in rules 33 and 34. Apparently rule 34 affects substantive rights, especially taken in conjunction with rule 37 (IV), which subjects a party to arrest for failure to obey any order of the court pertaining thereto. In *Union Pacific Railway Co.* v. *Botsford* (141 U. S. 250) it was held that a Federal court could not order a plaintiff in an action for damages to submit to a surgical examination in advance of a trial. The reason, as is clearly shown by the opinion, is that it was a substantive right not conferred by Federal statutes. That case reviews the extent to which courts of common law could go in compelling the production of books and documents, as well as other powers over the parties to the lawsuit.

The special remedies peculiar to equity arose because the parties to the controversy were not on equal footing, by virtue of trust relationship or other conditions where one party was in possession of much of the evidence, and so discovery and restraints upon the person or property were necessary to make either a suit or sometimes a defense to a suit possible.

Rule 36 is said to have its support, among other things, in the last paragraph of equity rule 58. A reference to such paragraph discloses that it is not near as broad, even in an equity suit, as rule 36 of the proposed rules applicable to actions at law as well as in equity. Under the equity rule, a demand for the admission of genuineness of documents is made 10 days before the trial (at a time when a party has prepared for trial) and calls for admitting the authenticity only of the document, letter, or other writing (saving just exceptions). Under rule 36 a party is required to admit or deny not only the genuineness of relevant documents but also the truth of any relevant facts stated therein—whether admissible or not, and apparently without saving any exceptions. Moreover, equity rule 58 calls upon a person to admit the whole document, whereas rule 36 requires one to negative or admit any particular part of a document.

The rule permits a party contemplating a lawsuit to send self-serving declarations to a proposed defendant, and after the suit has been filed call upon him to admit under oath the truth or falsity of such statements, the verbiage of which may have been selected by counsel. Furthermore, it might require the denial under oath of an unverified narration served by a plaintiff pursuant to rule 36.

Under rule 37, if a party refuses to permit entry on his property or to submit to certain other orders relating to discovery after being ordered to do so by a court, he may be punished, among other things, both by the default judgment against him or an arrest. This would seem to be, under the circumstances, legislation affecting substantive rights (*Union Pacific Railway Co.* v. *Botsford*, 141 U. S. 250).

In general, the various powers of discretion reposed in the court under the new rules, together with the power of every litigant to try the case piecemeal, serve to whittle down the right of trial by jury. Heretofore the theory has been that a case may be submitted at one time through the medium of oral testimony and in open court, except in the infrequent instances in which depositions are used. Now, by a kind of inquisition conducted under rule 26, interrogatories under rule 33, discovery under rule 34, and admission of facts under rule 36, together with the consequences imminent under rule 37, there is left little further to be done.

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CONFUSION AND UNCERTAINTY RESULTING FROM THE ADOPTION OF THE PROPOSED RULES

Mr. Charles A. Keigwin, a professor at law and noted authority on procedure, pointed out some of the confusion which will arise in the application of the rules. He said:

In respect to the procedure in the States which have adopted codes, where there is any uniformity in the code practice, there would be very little change, if any. I think these rules substantially adopt the code procedure. In a State like New York, Ohio, or California, I take it that the law would simply follow the procedure you just now brought up. In a jurisdiction like the District of Columbia, or a State like Maryland, or Illinois, or Massachusetts, the lawyers would have to learn the new practice. They would have to get a book on code pleadings.

With respect to substantive rights, what Mr. Marshall spoke about, they would produce the same sort of question in the code States as well as here. In many of the States the common law provides that a foreign corporation doing business in the State may be sued in courts of that State. The Supreme Court has time and again held that corporations may properly be subjected to that jurisdiction where they are doing business within the State.

We have a provision here that the liability of a corporation to be sued will depend upon the law of the State of its incorporation. It is possible that in a State like Delaware—I do not say it has been done or will be done—they would incorporate a concern that could be sued only in the State of Delaware. The corporation might be doing business in Pittsburgh, Cincinnati, or Chicago, and the question is whether or not that provision in these rules would subject that corporation to suit in the courts of the same State or, by he same token, in the United States court sitting in that State, because the corporation is controlled by the laws of the State of its incorporation.

It is the same way with respect to suing a partnership only by its name, or an unincorporated association. That may be the name under which they make their contracts. I take it there is a law in all the States that these people must be sued by their individual names. There are very few States, if any, without such a provision. When this provision goes into effect, you have something which dispenses with local laws, as to the manner in which the partnership may be sued. I think that goes somewhat beyond the procedural method. I think it is a substantive matter. Under our present practice, if you are going to sue A and B, you must sue them by their individual names.

THE RELATIONSHIP BETWEEN LAW AND EQUITY

Mr. Challen B. Ellis, a member of the Bar of the District of Columbia, submitted for the consideration of the committee, in addition to his oral testimony, a memorandum reading in part:

The confusion and uncertainty brought about by the rules for the Federal courts, as now reported to the Congress, arise from the fact that the right of litigants appropriate in equity cases only have now been prescribed for and made applicable to law cases triable by a jury, notwithstanding the act of Congress, under which the rules must be judged and applied specifically, requires that the rules shall preserve in full vigor the right of trial by jury with the ordinary incidents of such trial preserved in the Constitution and further specifically requires that such rules "shall neither abridge, enlarge, nor modify the substantive rights of any litigant" so far as jury actions are concerned.

The trial by jury is a product of the common law as it developed in England prior to the adoption of the Constitution. It has continued and developed in the several States which have complete and sovereign jurisdiction.

The incidents of trial by jury which make up what the Constitution calls due process of law are products of the development of common law in the States. These incidents are part of the rights of litigants and they are substantive rights because they involve the substantive right to due process of law—which may not be denied anyone under our form of government. Congress cannot take away these rights if it tried. It cannot set up a common law of the United States or for United States courts, for there is no common law outside the States. This is the purport of Justice Brandeis' decision April 25, 1938, in *Erie Railroad* v. *Thompkins*.

This decision throws a flood of light on the questions with which we are here concerned; that is, the conflicts and confusion which the new rules bring about.

For these rules do attempt so to modify trial by jury and the rights of litigants with respect thereto, as to seriously impair the efficacy of such a trial as an arbitration by one's neighbor and peers rather than by the uncontrolled action of a single judge.

The broad distinction between an action at law and a suit in equity has grown up in our practice ever since courts were established and dates back to the early days of English common law. The fundamental difference between law and equity is that law is concerned with the settlement of an issue of fact by a jury and does not in any manner involve any restraint on the person of the plaintiff or defendant; while in an action in equity, the court (formerly the chancelor) acted upon the person of the defendant; that is, the court had the authority, upon the proper showing, to order the defendant to do or not to do something on pain of certain punishment (sometimes in addition to contempt of court). As a result of this marked distinction the procedure in an equity suit differs radically from the procedure in a law action, and each has safeguards peculiarly necessary to the respective rights and powers.

Considering the tremendous powers of the chancelor and dangers of abuse, certain safeguards were thrown around an action

in equity which would not be needed nor appropriate in an action at law.

One of the first and most important safeguards is that equity is always an extraordinary remedy; that is, the drastic action of the court against the person of the parties may not be exercised unless that is the only way the complainant can escape irreparable injury. One of the outstanding principles always applied in equity is that if all the complainant is entitled to is a payment of money by the defendant to the plaintiff, he cannot impose any other obligation on the defendant, and, in fact, cannot bring his case in equity at all.

So it has been held over and over again, and has been enacted into the law of the United States, that no person can bring a bill in equity and invoke the extraordinary powers of the court when he has an adequate remedy at law, and ordinarily where an action is one on contract or one for a tort (which means nine-tenths of all the actions), the plaintiff is given remedy in damages. If the action is for breach of contract, the plaintiff is not entitled to anything but damages for the breach; if the plaintiff is injured by the negligence of the defendant, the plaintiff is compensated by damages. He cannot punish the defendant or order the defendant to turn over property to him, or make a deed, or submit to an inspection of his books and papers to establish the plaintiff's claim. In other words, in the ordinary everyday action at law, the question would be whether the plaintiff was damaged, and if so, how much; and the judgment is a money judgment if for the plaintiff and a judgment of dismissal if for the defendant. The defendant cannot be ordered to do anything or not to do anything. He has nothing to fear from interference with his person or conduct. All that is at stake is the property which he owns which may be seized after judgment only on execution, and such seizure can always be avoided by payment of the judgment.

But, in an equity case the court acting as chancellor scrutinizes with the greatest care the statement of the claim so as to be sure that the plaintiff, unless given the particular remedy of court order over the actions of the defendant other than the payment of money, will be irreparably injured; that is, whatever relief he might have will be gone. And so again, if the court finds that the plaintiff, under the guise of an equity proceeding, is attempting to harass the defendant or inquire into the affairs or examine his premises merely because he has a money claim against the defendant, the court is quick to dismiss the action, because it does not state a case in equity.

Now all this is to be thrown aside by the new rules of pleading and practice. Not alone do the rules provide for one form of action—which in itself is not objectionable—but they practically strike down all the safeguards thrown around the action at law; and, in addition, eliminate many of the safeguards peculiarly appropriate to equity.

APPLICATION OF THE DOCTRINE OF ERIE RAILROAD CO. *v.* TOMPKINS TO THE FEDERAL RULES OF CIVIL PROCEDURE

In a memorandum submitted for the consideration of the committee, Mr. Gustavus Ohlinger, a member of the bar of Ohio and an active practitioner in Toledo, Ohio, developed the application of the recent Supreme Court decision in the *Erie Railroad case* to the new rules. His memorandum reads in part:

While for the litigants *Erie Railroad Co.* v. *Tompkins* was concerned solely with a matter of substantive law, nevertheless for the people of the United States it was a forceful restatement of the philosophy underlying our Federal system of government.

The new rules for the district courts deal with procedure—any language in the rules, or any interpretation which would carry them outside that field would be unwarranted. But even as rules of procedure they are subject to the pragmatic tests which the Supreme Court applied to *Swift* v. *Tyson*. Will they introduce "grave discrimination by noncitizens against citizens?" Will they present "uniformity in the administration of the law of the State?" Will the impossibility of discovering a line of demarcation between the field which is appropriate to court rules, and the field which the rules should not enter, develop "a new well of uncertainties?"

Rule 2 provides:

"There shall be one form of action to be known as 'civil action.'"

In its report of April 1937 the Advisory Committee noted that this rule "suspended" United States Code 28:384; in its later Notes to the Rules the Committee advises that the rule "modifies" this section. The section in question is in almost the identical language of section 16 of Judiciary Act of 1789. It reads: "Suits in equity shall not be sustained in any court of the United States in any case where a plain, adequate, and complete remedy may be had at law."

Whether the Supreme Court, by adopting rule 2, meant to supersede or to modify the statute, or, if it intended to modify the statute, then in what particulars it meant to change it, is, at least, uncertain. It can well be argued that the distinction between law and equity is inherent in the Constitution, as interpreted by the Judiciary Act of 1789, and that the rule cannot change it. As said in *Armstrong Cork Co.* v. *Merchants Refrigerating Co.* (C. C. A. 8) (184 Fed. 199, 204):

"The difference, however, between causes of action at law and causes of action in equity is in matter of substance, and not of form. It inheres in the natures of the causes themselves, and it cannot be extracted by legislation or declaration. This ineradicable difference is sedulously preserved in the forms of suits which enforce these causes in the national courts. In those courts a legal cause of action may not be sustained in equity because the parties are entitled to a trial of the issues in such a cause by a jury under article 7 of the amendments to the Constitution of the United States, and it is only when there is no adequate remedy at law that a suit in equity can be maintained. * * * As the essential character of a cause of action and of the remedy it seeks determines whether it is a cause at law or in equity, neither the parties to it nor the court can by declaration or procedure make a cause of action at law a cause in equity, or vice versa, and when a pleading by the complainant, whether styled a petition, a declaration, or a bill, is filed with the clerk of a Federal court which states any cause of action, it necessarily states one at law or one in equity, and the facts set forth in the pleading and the remedy sought thereby determine whether the cause of action pleaded is at law or in equity, and whether the pleading filed invokes the jurisdiction of the court at law or in equity (*Van Nordon* v. *Morton*, 99 U. S. 378, 380, 25 L. Ed. 453; *New Orleans* v. *Construction Co.*, 129 U. S. 45, 9 Supp. Ct. 223, 32 L. Ed. 607)."

Rule 3 consists of two lines. "A civil action is commenced by filing a complaint with the court." What could be simpler? Moreover, what could be more patently procedural than this rule? But a brief comment by the advisory committee gives pause for thought:

"When a Federal or State statute of limitations is pleaded as a defense, a question may arise under this rule whether the mere filing of the complaint stops the running of the statute or whether any further step is required, such as service of the summons and complaint or their delivery to the marshal for service. The answer to this question may depend on whether it is competent for the Supreme Court, exercising the power to make rules of procedure without affecting substantive rights, to vary the operation of statutes of limitations."

In the past the Rules of Decision Act has been applied to State statutes of limitations. The Supreme Court, in *Bauserman* v. *Blunt* ((1893) 147 U. S. 647; 13 S. Ct. 466; 37 L. Ed. 316), said:

"No laws of the several States have been more steadfastly or more often recognized by this Court, from the beginning, as rules of decision in the courts of the United States, than statutes of limitations of actions, real and personal, as enacted by the legislature of a State, and as construed by its highest court (*Higginson* v. *Mein*, 4 Cranch. 415, 419, 420; *Shelby* v. *Guy*, 11 Wheat. 361, 367; *Bell* v. *Morrison*, 1 Pet. 351, 360; *Henderson* v. *Griffin*, 5 Pet. 151; *Green* v. *Neal*, 6 Pet. 291, 297–300; *McElmoyle* v. *Cohen*, 13 Pet. 312, 327; *Harpending* v. *Dutch Church*, 16 Pet. 455, 493; *Leffingwell* v. *Warren*, 2 Black 599; *Sohn* v. *Waterson*, 17 Wall. 596, 600; *Tioga Railroad* v. *Blossburg & Corning Railroad*, 20 Wall. 137; *Kibbe* v. *Ditto*, 93 U. S. 674; *Davis* v. *Briggs*, 97 U. S. 628, 637; *Amy* v. *Dubuque*, 98 U. S. 470; *Mills* v. *Scott*, 99 U. S. 25, 28; *Moores* v. *National Bank*, 104 U. S. 625; *Michigan Insurance Bank* v. *Eldred*, 130 U. S. 693, 696; *Penfield* v. *Chesapeake, &c., Railroad*, 134 U. S. 351; *Barney* v. *Oelrichs*, 138 U. S. 529)."

This rule has been followed quite consistently: *Balkan* v. *Woodstock Iron Co.* ((1894, 154 U. S. 177, 14 S. Ct. 1010, 38 L. ed. 953); *Weems* v. *Carter* ((C. C. A. 4), 30 F. (2d) 202); *Craig* v. *United States* ((C. C. A. 10), 89 F. (2d) 586); and *Graham* v. *United States* ((C. C. A. 10), 89 F. (2d) 591) (limitations on revival of action); *Arkansas Fuel Oil Co.* v. *City of Blackwell* ((C. C. A. 10), 87 F. (2d) 50) (time of accrual of cause of action); *Walton* v. *United States* ((C. C. A. 8), 73 F. (2d) 15); *Apple* v. *Owens* ((C. C. A. 5), 48 F. (2d) 807) (limitation on cause of action of surety for contribution); *Watkins* v. *Madison County Trust & Deposit Co.* ((C. C. A. 2), 24 F. (2d) 370, cert. den. (1928), 277 U. S. 602, 48 S. Ct. 562, 72 L. ed. 1010) (limitation on action for conversion under N. Y. Civil Practice Act); *St. Louis S. F. R. Co.* v. *Quinette* ((C. C. A. 8), 251 Fed. 773).

However, *Van Dyke* v. *Parker* ((C. C. A. 9), 83 F. (2d) 35), indicates that the statute of limitations is not a substantive right but relates to the remedy, and the law of the forum should control. The law of the forum, insofar as the Federal courts are concerned, will be rule 3:

"A civil action is commenced by filing a complaint with the court." Does the mere filing of a complaint toll the State statute of limitations when a State statute, like Ohio General Code, sec. 11230, reads:

"When commenced: An action shall be deemed to be commenced within the meaning of this chapter, as to each defendant, at the date of the summons which is served on him or on a codefendant who is a joint contractor, or otherwise united in interest with him. When service by publication is proper, the action shall be deemed to be commenced at the date of the first publication, if it be regularly made."

"This chapter," as referred to in the section quoted, is the chapter entitled "Limitations of Actions." If the mere filing of a complaint does toll the State statute of limitations, then we have a different and more liberal rule in the Federal court, and litigants in the same State, by reason of the accident of diversity, may be unsuccessful in invoking the statute in the Federal court, while they might succeed in setting up the bar in a State court.

But is rule 3 the law of the forum? The enabling act, act of June 19, 1934 (ch. 651, 48 Stat. 1064), among other things, says:

"Said rules shall neither abridge, enlarge, nor modify the substantive rights of any litigant * * *. They shall take effect 6

months after their promulgation, and thereafter all laws in conflict therewith shall be of no further force or effect * * *."

The court must, therefore, first draw a line between substantive rights on the one hand and procedure and remedies on the other—a distinction more shadowy and difficult than that between rules of property and general common or commercial law. Any rule invading a substantive right, either under State statute or under State decisions, would, under the Erie Railroad Co. case, be "an unconstitutional assumption of powers by courts of the United States," and an invasion of State autonomy.

Again, what is meant by the words "of no further force or effect"? Is the Rules of Decision Act, insofar as it applies to what has heretofore been considered remedial, rendered of no further force and effect? For the purpose of statutes of limitations will the computation of time in rule 6 enlarge the State statute of limitations and create two rules of limitations side by side? If so, the accident of diversity again could readily change the outcome of litigation. Can the relation back to the date of the original pleading of an amendment under rule 15 (c) whenever the claim "asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading," result in the continuance in the Federal court of litigation which would be barred under the State decisions on the statute of limitations?

So far as suits in equity are concerned, the Federal courts have in the past determined for themselves when a suit was deemed commenced. (See *United States* v. *American Lumber Co.* (C. C. A. 9), 85 Fed. 827; *Humane Bit Co.* v. *Barnet* (C. C. N. J.), 117 Fed. 316; *United States* v. *Miller* (C. C. Oreg.), 164 Fed. 444; *Brown* v. *Pacific Mutual Life Ins. Co.* (C. C. A. 4), 62 F. (2d) 711; *United States* v. *Hardy* (C. C. A. 4), 74 F. (2d) 841.) Will rule 3 be applied uniformly to actions at law and actions in equity, since there is one form of civil action? Here we come upon a dilemma. If it is applied uniformly, it will in law actions override State statutes of limitation and result in different rules in the Federal and State courts. If it is applied only to equity proceedings, as it well might be, the court must first determine what in the past has been a cause of action in equity and a cause of action at law, without having, in the Federal practice, even the familiar landmark of "cause of action" as a guide, it having been superseded by "claim for relief." (See rule 8.)

These questions as to "commencement" of an action will arise, under rule 3, not only in the field of the statute of limitations, as the advisory committee has suggested, but also in connection with abatement and revival. (See *In re Connaway as Receiver of the Moscow National Bank* (1900), 178 U. S. 421, 20 S. Ct. 951, 44 L. Ed. 1134; in the determination of when the doctrine of lis pendens applies, see *Wheeler* v. *Walton & Whann Co.* (C. C. Del.), 65 Fed. 720; and in ascertaining whether a district court or a State court first obtained jurisdiction over a cause, or a res, see *Farmers' Loan, etc. Co.* v. *Lake St. Rd. Co.*, 177 U. S. 51, S. Ct. 564, 44 L. Ed. 667; *Harkin* v. *Brundage* (1928), 276 U. S. 36, 48 S. Ct. 268, 72 L. Ed. 457; *Brown* v. *Pacific Mutual Life Ins. Co.* (C. C. A. 4), 62 F. (2d) 711.) In the latter instance equity and law must again of necessity be separated.

Under V, Depositions and Discovery, rules 26 to 37, inclusive, provision is made for broader powers of discovery than obtain in most of the States. In fact, in the words of the advisory committee, these sections give an "unlimited right of discovery." Will this introduce "grave discriminations by noncitizens against citizens," such as were criticized by the Supreme Court in the Erie Railroad Co. case? Will such a "unlimited right of discovery" be abused by nonresidents against residents, as a means of forcing settlement in "nuisance" suits? Will not serious uncertainties arise as to whether rules 38 and 39 under more than lip service to the seventh amendment? How many uncertainties as to venue and the existence of a case or controversy will arise as to third-party practice under rule 14?

Will substantive rights be affected and will different results be reached in the State and Federal courts when rule 43 on evidence is applied? It is interesting to note the companion articles by Charles C. Callahan and Edwin E. Ferguson entitled "Evidence and the New Federal Rules of Civil Procedure," appearing in 45 Yale L. J. 622 and 47 Yale L. J. 194. In volume 45, at page 645, it is said:

"There is often a very close judicial relation between legal rights and the evidence which will establish them. Presumptions and burden of proof, suits involving title to land, are commonly used examples. It can be urged that conformity would operate to give full force and effect to local remedies and modes of rendering substantive rights cognizable. And so far as cases of exclusive Federal jurisdiction are concerned, conformity has been said to be desirable in that the Federal court will have the benefit of advanced State legislation.

"The proponents of conformity, however, rely mainly on the argument that substantive rights are better enforced through State rules of evidence."

Again, at pages 646–647, it is said:

"And the evils which the proponents of conformity fear may very well disappear through the States' gradual acceptance of the Federal system as their model. This was the belief and hope of the proponents of the new rules of procedure. One writer suggests that 'there are serious considerations militating against such an outcome,' in that the States will quite likely wish to keep the control of the processes of their courts in their own hands, and that should there be such adoption, the initiative in judicial reform would pass to Washington, weakening the vitality of State jurisprudence. Without concrete evidence one way or the other, a valid prediction is difficult; but it is submitted that if the Federal procedure is as successful in operation as it might well be, the pressure of the people and bar in the State will be brought to bear upon its adoption, rather than toward a jealous guarding of procedural independence; that it is a matter of conjecture whether State initiative in reform will cease upon an adoption of the Federal procedure."

As against these conjectures, it is well to recall the remark of Justice Holmes in *New York Trust Co.* v. *Eisner* (1921; 256 U. S. 345, 349, 41 S. Ct. 506, 65 L. Ed. 963):

"A page of history is worth a volume of logic," and to consider the opinion in the Erie Railroad case:

"Experience in applying the doctrines of *Swift* v. *Tyson*, had revealed its defects, political and social; and the benefits expected to flow from the rule did not accrue. Persistence of State courts in their own opinions on questions of common law prevented uniformity; * * * and the impossibility of discovering a satisfactory line of demarcation between the province of general law and that of local law developed a new well of uncertainties * * *.

"On the other hand, the mischievous results of the doctrine had become apparent. Diversity of citizenship jurisdiction was conferred in order to prevent apprehended discrimination in State courts against those not citizens of the State. *Swift* v. *Tyson* introduced grave discrimination by noncitizens against citizens. It made rights enjoyed under the unwritten 'general law' vary according to whether enforcement was sought in the State or in the Federal court; and the privilege of selecting the court in which the right should be determined was conferred upon the noncitizen. (Note No. 9.) Thus, the doctrine rendered impossible equal protection of the law. In attempting to promote uniformity of law throughout the United States, the doctrine had prevented uniformity in the administration of the law of the State."

The statements quoted are strongly supported by the references in the notes which accompany the opinion.

Again compare the history of *Swift* v. *Tyson* with the following comment on page 197 of volume 47, Yale L. J.:

"It is not intended to present a dark picture of the operation of this part of rule 44; indeed its virtue seems to lie in the fact that it does not restrict courts to a particularized body of rules. As to general questions of admissibility, therefore, the Federal courts will have complete freedom to develop their own rules. This may be somewhat of an overstatement. The fact that certain evidence, such as flagrant hearsay or opinion, is not admissible in any court, coupled with the judicial dislike for sudden change, point to the prediction that, although the Federal courts will be starting practically with a clean slate so far as rules of admissibility are concerned, the new body of precedent will be much the same as the old in general outline. But the rule of admissibility as proposed by the advisory committee does give the courts a free hand in applying reforms to individual rules, thus keeping them abreast of the times."

The inconsistency of the philosophy underlying the new rules, with that upon which *Erie Railroad Co.* v. *Tompkins* is based, becomes apparent. The hopes now expressed were also entertained by Justice Story who wrote the opinion in *Swift* v. *Tyson*. For a hundred years the Supreme Court wrestled with the problems arising out of that decision while it waited for the fulfillment of those hopes. Finally, in desperation, it abandoned entirely the century old, yet always new, "well of uncertainties."

It should be borne in mind, too, that many of the rules are modeled after those prescribed for courts of general jurisdiction under unitary governments—the English rules under the Judicature Act, the rules adopted in self-governing commonwealths of the British Empire; and after those which States have provided by legislation for courts of general jurisdiction. Senator KING has pointed out, in the hearings on the present resolution, how even under the English rules "over 4,000 cases went to the courts growing out of misinterpretation or lack of interpretation, or attempts to reconcile the rules with what might be called substantive law."

Our problems are vastly more difficult than those that might arise in a unitary State with courts of general jurisdiction. The district courts are courts of strictly limited powers in a Federal State. They are confronted by all the problems inherent in their special character—problems of State autonomy and independence, problems of equal protection of the law, and by problems of jurisdiction and venue. As said by Benjamin R. Curtis, one time an Associate Justice of the Supreme Court:

"Let it be remembered, also—for just now we may be in some danger of forgetting it—that questions of jurisdiction were questions of power between the United States and the several States."

CITY OF NEW BRUNSWICK, N. J.

Mr. BROWN of Michigan. Mr. President, I ask unanimous consent that the votes whereby Senate bill 1294 was ordered to be engrossed for a third reading, read the third time, and passed on yesterday be reconsidered. There are certain amendments which the Senator from Nebraska [Mr. BURKE], the Senator from Louisiana [Mr. ELLENDER], and I intended should be added to the bill. I ask that the bill be now reconsidered, and the amendments agreed to.

The PRESIDENT pro tempore. The Chair understands the request of the Senator from Michigan to be that the votes by which Senate bill 1294 was ordered to be engrossed for a third reading, read the third time, and passed on yesterday, be reconsidered; also, that if the bill has been transmitted to the House of Representatives, it be recalled.

Mr. BROWN of Michigan. Yes; I ask that the bill be recalled from the House, if necessary.

The PRESIDENT pro tempore. Is there objection to that request? The Chair hears none.

Mr. KING. Mr. President, a parliamentary inquiry. May amendments be offered to the bill while it is in the possession of the House, or must the Senator from Michigan wait until the bill is returned?

The PRESIDENT pro tempore. The Chair is not yet advised as to whether the bill is still in the possession of the Senate. If the bill is not in the possession of the Senate, it will be necessary to recall the bill from the House.

Mr. BROWN of Michigan. When that is ascertained, I will take up the matter again.

Mr. BROWN of Michigan subsequently said: Mr. President, I ask that the amendments which I send to the desk be stated.

The PRESIDENT pro tempore. Senate bill 1294 is in the possession of the Senate. Therefore, it is in order, by unanimous consent, that the votes by which it was ordered to be engrossed for a third reading, read the third time, and passed, be reconsidered, and that the bill be restored to the calendar. Is there objection to that course? The Chair hears none, and it is so ordered.

Is there objection to temporarily laying aside the unfinished business and proceeding to the consideration of Senate bill 1294?

Mr. McNARY. Mr. President, I did not hear the nature of the request.

The PRESIDENT pro tempore. The request of the Senator from Michigan is that the Senate proceed to the consideration of Senate bill 1294, and that the unfinished business be temporarily laid aside for that purpose.

Mr. KING. It is a bill which we passed yesterday. By inadvertence, the amendments were not incorporated in it.

The PRESIDENT pro tempore. The Chair hears no objection.

The Senate proceeded to consider the bill (S. 1294) for the relief of the city of New Brunswick, N. J.

The PRESIDENT pro tempore. The amendments offered by the Senator from Michigan [Mr. BROWN] will be stated.

The amendments submitted by Mr. BROWN of Michigan to the committee amendment in the nature of a substitute agreed to yesterday were as follows:

On page 3, line 7, before the words "per centum", to strike out "14" and insert "15"; on page 4, line 1, after the word "price", to strike out "but such" and insert a period and "The amount of such mortgage may be increased, as may be determined by the Secretary of the Treasury and the Reconstruction Finance Corporation pursuant to the rules and regulations adopted under the provision of section 13 (b) hereof, but the face amount of any such"; on the same page, line 12, after the word "years" and the period to insert "The Corporation is hereby authorized and directed to apply for such insurance."

On page 4, after line 12, to strike out section 12 and insert in lieu thereof the following:

Sec. 12. (a) The Reconstruction Finance Corporation is hereby authorized to purchase from the United States Housing Corporation, at their face value, such of the aforesaid mortgages as in the opinion of the Board of Directors of Reconstruction Finance Corporation constitute full and adequate security for the indebtedness secured thereby, and to sell or otherwise dispose of any such mortgages so purchased for such price and upon such terms as it may determine.

(b) Any such mortgages not purchased by Reconstruction Finance Corporation may be sold by the United States Housing Corporation pursuant to rules and regulations adopted under the provisions of section 13 (b) hereof.

(c) The funds received by the United States Housing Corporation from the sales provided for in sections 10 and 13 hereof, from any collections on mortgages executed and delivered pursuant to section 11 hereof, and from any sales of such mortgages authorized by said section 11, shall be used to clear any liens described in clause (c) of section (c) of section 10, and to pay any special expenses incurred by the United States Housing Corporation in carrying out the provisions of this act, including title expenses, recordation costs, and any expenses of the application to Federal Housing Administrator for insurance pursuant to section 11 hereof, and the remainder may, in the discretion of the Secretary of the Treasury and the Reconstruction Finance Corporation and pursuant to the rules and regulations promulgated under section 13 (b) hereof, be paid to the city of New Brunswick, N. J., for municipal and school service rendered to the Lincoln Gardens area and the residents thereof prior to the date of the sale of such property as provided in section 10.

On page 5, line 17, after the words "may be", to strike out "necessary to carry" and insert "deemed advisable in carrying", and in line 18, after the word "Act", to insert "and settling any pending litigation with respect to any property involved", so as to make the bill read:

Be it enacted, etc., That the act entitled "An act to authorize the President to provide housing for war needs", approved May 16, 1918, as amended, is hereby amended by adding at the end thereof the following new sections:

"SEC. 9. The United States Housing Corporation (hereinafter referred to as the 'Corporation') is authorized and directed to accept from any person holding an existing contract for the property in the Lincoln Gardens project, New Brunswick, N. J., a full release of any right or interest any such person may have acquired by reason of any such contract. Upon tender of release by any such person and acceptance by said Corporation, such contract shall become null and void and of no further force or effect, and shall be considered as a forfeiture of any right or interest any person may have acquired under or by reason of such contract.

"SEC. 10. Upon any such tender, acceptance, and forfeiture, the Corporation shall sell to such person the property covered by such forfeited contract for an amount equal to the sum of (a) 15 percent of the original contract price of such property, (b) any sum which was due the Corporation under such contract and unpaid on the date of such forfeiture, and (c) the value of any other valid liens (but not tax liens) against such property existing on the date of such sale. Such sale shall be made upon the terms and conditions set forth in section 11 hereof, and the purchaser shall have the option to elect whether to pay the purchase price in cash or partly in cash, or to have the payment of the same in whole or in part secured by the mortgage referred to in section 11.

"SEC. 11. Upon the sale of such property as provided in section 10, the Corporation shall, notwithstanding any alleged tax liens against such property, execute and deliver to the purchaser a warranty deed for such property, free and clear of all encumbrances to the date of such sale. The United States, upon conveyance, shall retain a first lien for any unpaid portion of the purchase price. To secure such lien the purchaser shall execute and deliver a first mortgage to the Corporation for any unpaid portion (or all) of the purchase price.

The amount of such mortgage may be increased, as may be determined by the Secretary of the Treasury and the Reconstruction Finance Corporation pursuant to the rules and regulations adopted under the provision of section 13 (b) hereof, but the face amount of any such mortgage shall not exceed 50 percent of the original contract price at which the property was first sold by the United States. Such first mortgages shall be executed upon a form approved by the Federal Housing Administrator for use in the State of New Jersey, shall bear interest at a rate not to exceed 5 percent per annum, and shall contain such further terms and conditions as may be necessary to make them legally eligible for insurance under title 2 of the National Housing Act as amended: *Provided,* That at the option of the purchaser such mortgages may be made to mature in not to exceed 15 years. The Corporation is hereby authorized and directed to apply for such insurance.

SEC. 12. (a) The Reconstruction Finance Corporation is hereby authorized to purchase from the United States Housing Corporation, at their face value, such of the aforesaid mortgages as in the opinion of the Board of Directors of Reconstruction Finance Corporation constitute full and adequate security for the indebtedness secured thereby, and to sell or otherwise dispose of any such mortgages so purchased for such price and upon such terms as it may determine.

(b) Any such mortgages not purchased by Reconstruction Finance Corporation may be sold by the United States Housing Corporation pursuant to rules and regulations adopted under the provisions of section 13 (b) hereof.

(c) The funds received by the United States Housing Corporation from the sales provided for in sections 10 and 13 hereof, from any collections on mortgages executed and delivered pursuant to section 11 hereof, and from any sales of such mortgages authorized by said section 11, shall be used to clear any liens described in clause (c) of section 10, and to pay any special expenses incurred by the United States Housing Corporation in carrying out the provisions of this act, including title expenses, recordation costs, and any expenses of the application to Federal Housing Administrator for insurance pursuant to section 11 hereof, and the remainder may, in the discretion of the Secretary of the Treasury and the Reconstruction Finance Corporation and pursuant to the rules and regu-

lations promulgated under section 13 (b) hereof, be paid to the city of New Bruswick, N. J., for municipal and school service rendered to the Lincoln Gardens area and the residents thereof prior to the date of the sale of such property as provided in section 10.

SEC. 13. (a) Anyone who fails or refuses to execute a release to the Corporation as provided in section 9 hereof, for any reasons whatsoever, within 90 days after the date such section takes effect, shall be ineligible to receive the benefits of sections 9 to 11, inclusive, of this act, and the Corporation shall cause such proceedings to be instituted as may be appropriate to enforce the rights of the United States, and if necessary, to divest anyone of any interest which may have been acquired in any property in the Lincoln Gardens project, and sell the property so recovered at public or private sale. The Corporation may, however, in its discretion, extend such time for a further period of not to exceed 90 days.

(b) The Corporation, with the approval of the Secretary of the Treasury and the Reconstruction Finance Corporation, shall have power to make such rules and regulations as may be deemed advisable in carrying out the provisions of sections 9 to 13, inclusive, of this act and settling any pending litigation with respect to any property involved.

The amendments to the amendment were agreed to.

The amendment, as amended, was agreed to.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

The title was amended so as to read: "A bill to amend the act entitled 'An act to authorize the President to provide housing for war needs,' approved May 16, 1918, as amended."

GRIFFITH L. OWENS

The PRESIDENT pro tempore laid before the Senate the amendment of the House of Representatives to the bill (S. 3215) for the relief of Griffith L. Owens, which was, on page 1, line 8, after "amended"," to insert "and as limited by the act of February 15, 1934 (48 Stat. 351),".

Mr. AUSTIN. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

SALE BY THE UNITED STATES OF WAR MATERIALS TO JAPAN

Mr. POPE. Mr. President, the American people are shocked at the continued Japanese barbarities in carrying out her campaign against China. Our Government has protested against particular acts of violence, and we have claimed damages for property destroyed. America has been joined by other powers in these protests. It is just as well, however, for us to recognize the bitter fact that it is America which is supplying 54.4 percent of the materials absolutely necessary in order that Japan may continue her aggression against China. It is doubtful whether Japan could get these materials if we were not willing to supply them.

These commodities are: Oil; iron—pig iron, scrap iron and steel; ores—lead, copper, tin, zinc; aluminum; machinery—engines and parts for automobiles and airplanes; trucks, motors, and so forth.

The figures have just been compiled from the reports issued by the Japanese Government, and also from the United States Department of Commerce, Far Eastern Financial Note, No. 246, January 19, 1938.

I have before me a table showing the distribution of Japanese imports essential for war purposes by the principal countries. Mr. President, I ask that the table may be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Distribution of Japanese imports essential for war purposes, by principal countries

[Thousands of yen]

Commodity class and country	1937		1936	
	Value [1]	Percent of total	Value	Percent of total
All oil		100.0	172,491	100.0
United States of America		60.5	109,340	63.4
Dutch India		30.8	43,492	25.2
British Borneo		4.4	9,524	5.5

[1] The values for 1937 have not been entered here because the estimated figures are not accurate enough to be of any real use.

Distribution of Japanese imports essential for war purposes, by principal countries—Continued

[Thousands of yen]

Commodity class and country	1937		1936	
	Value	Percent of total	Value	Percent of total
Ores (iron, zinc, etc.)		100.0	51,151	100.0
British Malay		[2] 36.9	18,865	36.9
China		16.9	12,015	23.5
Philippine Islands		[2] 11.9	6,092	11.9
British India		9.9	4,184	8.2
Australia		6.3	3,288	6.4
United States of America		4.7	778	1.5
Great Britain		1.3	641	1.3
Pig iron		100.0	42,064	100.0
United States of America		41.6	69	.2
Manchuria		22.3	14,659	34.8
British India		24.2	14,570	34.6
Soviet Union			12,528	29.8
Great Britain		1.5	220	.5
Belgium		.9		
Other iron		100.0	149,976	100.0
United States of America		59.7	78,026	52.0
Germany		5.6	12,120	8.1
Belgium		5.4	7,447	4.9
British India		4.8	7,568	5.0
Great Britain		4.0	7,100	4.7
Dutch India		[2] 2.1	3,100	2.1
Australia		[2] 2.0	3,034	2.0
Copper		100.0	32,873	100.0
United States of America		92.9	31,930	97.1
Canada		3.5	490	.1
Lead		100.0	26,873	100.0
Canada		41.4	11,779	43.8
British India		19.7	3,765	14.0
Australia		5.8	219	.8
United States of America		4.1	2,642	9.8
Tin		100.0	15,082	100.0
Straits Settlements		50.5	8,677	57.5
China and Hong Kong		25.6	5,653	37.5
Dutch India		3.2	235	1.6
Zinc		100.0	10,997	100.0
Australia		43.8	3,439	31.3
Canada		23.2	3,836	34.9
United States of America		20.4	1,999	18.2
Aluminum		100.0	13,229	100.0
Canada		67.9	8,620	65.2
Norway		22.9	759	5.7
Great Britain		6.6	44	.3
Switzerland		1.4	1,952	14.8
United States of America		.3	489	3.7
Automobile and parts		100.0	37,036	100.0
United States of America		91.2	34,929	94.3
Germany		3.5	810	2.2
Great Britain		2.2	674	1.8
Machinery and engines [3]		100.0	33,243	100.0
United States of America		48.5	14,095	42.4
Germany		25.6	8,942	26.9
Great Britain		14.7	5,917	17.8

[2] The percentages are those for 1936.

[3] All machinery combined.

Mr. POPE. I desire to call attention to the imports into Japan from various countries and the percentage thereof coming from the United States. Let us take oil. The United States ships to Japan 60.5 percent of all the oil that is purchased by Japan from all countries. The United States furnishes 41 percent of all the imports of pig iron into Japan. The United States furnishes 59.7 percent of all other kinds of iron purchased by Japan from other countries. The United States furnishes 92.9 percent of all copper that is purchased by Japan. The United States furnishes 20 percent of the zinc purchased by Japan. The United States furnishes 91.2 percent of all automobiles and automobile parts, which include trucks, used by the Japanese in their war on China. The United States furnishes 48.5 percent of all machinery of all kinds purchased by Japan and used in the war against China.

The following table is still more conclusive in its proof of the fact that America is Japan's best support in the war against China. The table shows the contribution of the nine principal countries toward the Japanese aggression.

In 1937 the United States furnished 627,238 yen toward the Japanese bill for war materials, or 54.4 percent, as I have pointed out. The British Empire furnished 17.5 percent of Japan's bill for war materials; Dutch India, 7.4 percent; and so forth, as shown in the table for the nine countries. I ask that the table be included as a part of my remarks.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Principal countries	1937	
	Value[1]	Share in aggregate[2]
	Thousand Yen	*Percent*
United States of America[3]	627,238	54.4
British Empire[3]	201,496	17.5
Dutch India	84,913	7.4
Germany	43,434	3.8
Belgium	23,473	2.0
China[4]	20,099	1.7
Soviet Union		
Norway	2,931	.3
Switzerland	179	.02
Total	1,003,764	87.1

[1] Values for 1937 are approximate estimates.
[2] Aggregate value of imports of 13 commodity classes: 1937, 1,152,861,000 yen; 1936, 585,015,000 yen.
[3] United States of America includes Philippine Islands; British Empire includes Great Britain, Canada, Australia, India, Malay, and British Borneo.
[4] Manchuria is excluded.

Mr. POPE. The table shows that our exports to Japan are by far the most important, supplying in 1937 54.4 percent of all the materials essential to Japan's campaign in preparation for her war and the carrying on of her aggressive war against China. The British Empire takes the second place; Dutch India, third.

On the other hand, Germany, the ally of Japan, furnishes but 3.8 percent of these war materials. The remainder comes from the democratic countries of Europe and of the Western Hemisphere.

This morning's newspaper tells of another horrible bombing of Canton. In that operation the United States furnished more than half the gasoline and oil necessary for carrying out the venture.

Another item which is absolutely essential to Japan for the continuance of the war is credit. The bulk of the credit is being furnished her by the United States.

There may be serious question as to what other course the United States ought to follow in this matter. Certainly serious consideration should be given to any other course; but the interesting fact remains that while the United States protests against the aggression of Japan in China, and while 95 to 99 percent of the American people feel keenly the invasion of China by Japan, yet the United States, by furnishing the necessary war materials to Japan, keeps her going in her war on China. I think it is clear that if it were not for the materials which the United States is furnishing Japan, this war of aggression would be seriously hampered. Whether the Japanese embargo should be supported by the Government may be a question. At any rate, the American people ought to know that while they are longing for the discontinuance of the aggressive war upon China by Japan, we are making it possible for Japan to carry on the war by the shipment of war materials to Japan.

Mr. McNARY. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Chief Clerk called the roll, and the following Senators answered to their names:

Adams	Dieterich	King	Pittman
Andrews	Donahey	La Follette	Pope
Ashurst	Duffy	Lee	Radcliffe
Austin	Ellender	Lewis	Reames
Bailey	Frazier	Lodge	Russell
Bankhead	George	Logan	Schwartz
Barkley	Gerry	Lonergan	Schwellenbach
Berry	Gibson	Lundeen	Sheppard
Bilbo	Glass	McAdoo	Shipstead
Bone	Green	McGill	Smith
Borah	Guffey	McKellar	Thomas, Utah
Brown, Mich.	Hale	McNary	Townsend
Brown, N. H.	Harrison	Maloney	Truman
Bulkley	Hatch	Miller	Tydings
Bulow	Hayden	Milton	Vandenberg
Burke	Herring	Minton	Van Nuys
Byrd	Hill	Murray	Wagner
Byrnes	Hitchcock	Neely	Walsh
Capper	Holt	Norris	Wheeler
Caraway	Hughes	O'Mahoney	
Connally	Johnson, Calif.	Overton	
Copeland	Johnson, Colo.	Pepper	

The PRESIDING OFFICER. Eighty-five Senators having answered to their names, a quorum is present.

CLAIMS OF CHOCTAW INDIANS OF MISSISSIPPI

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 1478) conferring jurisdiction on the Court of Claims to hear and determine the claims of the Choctaw Indians of the State of Mississippi.

Mr. CONNALLY. I move that the Senate disagree to the amendment of the House, request a conference with the House on the disagreeing votes of the two Houses thereon, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. WHEELER, Mr. CHAVEZ, and Mr. FRAZIER conferees on the part of the Senate.

BLUE RAPIDS GRAVEL CO.

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2566) for the relief of the Blue Rapids Gravel Co., of Blue Rapids, Kans., which were, on page 1, line 4, to strike out all after "money" down to and including "Corps" in line 6 and insert "in the Treasury not otherwise appropriated"; and on page 1, line 8, to strike out "Government" and insert "United States."

Mr. CAPPER. I move that the Senate concur in the House amendments.

The motion was agreed to.

EDITH JENNINGS AND LEGAL GUARDIAN OF PATSY RUTH JENNINGS

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2798) for the relief of Edith Jennings and the legal guardian of Patsy Ruth Jennings which were, on page 1, line 8, after "Jennings", to insert "a minor", on page 2, line 2, after "Administration", to insert ", near Derby, Kans."; and to amend the title so as to read: "An act for the relief of Edith Jennings and Patsy Ruth Jennings, a minor."

Mr. CAPPER. I move that the Senate concur in the House amendments.

The motion was agreed to.

RIVER AND HARBOR AUTHORIZATIONS

The Senate resumed the consideration of the bill (H. R. 10298) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Mr. COPELAND obtained the floor.

Mr. NORRIS. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from New York yield to the Senator from Nebraska?

Mr. COPELAND. I yield.

Mr. NORRIS. I did not know any Senator had the floor.

Mr. COPELAND. I have asked that the unfinished business be laid before the Senate. I inquire if that has been done.

The PRESIDING OFFICER. The unfinished business, the river and harbor bill, is now before the Senate.

Mr. COPELAND. Then I yield to the Senator from Nebraska.

Mr. NORRIS. I do not want to interrupt the Senator from New York.

Mr. COPELAND. As I said last night, so far as the committee amendments are concerned, they have been considered, and the bill is now open to amendment from the floor.

Mr. NORRIS. That is what I want to get the floor for. I desire to offer an amendment, but I do not want to take the Senator off the floor, if he desires to speak. I am in no hurry whatever.

Mr. COPELAND. I am glad to yield to the Senator from Nebraska.

Mr. NORRIS. Mr. President, I desire to make a few general remarks on the bill before I offer the amendment.

I realize that probably it will be futile to offer any amendment to the bill or that amendments very likely will be

voted down and the bill will be passed as the committee has reported it. That could not be prevented by a regiment of soldiers. Of course, I do not desire to defeat the bill, but I do not wish to be misunderstood in connection with the amendment that I intend to offer.

I am opposed to the Corps of Engineers of the United States Army being given power to fix a policy of the Government. The amendment which I am going to offer takes away a power conferred by this bill upon the Corps of Engineers to fix a governmental policy.

I am actuated, Mr. President, by no disrespect for the Corps of Engineers. I think they are men of high professional character and ability. Their viewpoint, at least on life in general and upon government in particular, is not always the same as mine, but I cannot criticize them for that. However, there is no reason, in my judgment, why we should confer the power to determine a governmental policy upon the Corps of Engineers. The pending bill, to some extent, does that. I admit it does so in a very mild way; it does not go nearly so far as does the flood-control bill, the companion bill, which is now on the calendar, and which, I understand, is to be taken up tomorrow; but it takes a step in that direction. As I see it, there is no reason why a man because of the high professional character and ability in the engineering line should therefore be empowered to fix a Government policy, even in regard to those improvements which, as an engineer, he has charge of and which he constructs.

I should like to add also that the Army has no monopoly on high professional qualifications in the engineering line. The Reclamation Bureau, a governmental bureau, has constructed some of the most important engineering works, including dams and other improvements, that are known to the world. I do not mean that they outshine everyone else, but they compare favorably with any other organization of engineers anywhere. The great Boulder Dam was constructed under the supervision of the Reclamation Bureau. As I remember, the Pathfinder Dam, which at the date of its construction, was one of the great engineering feats of the world, was constructed by the Reclamation Bureau. The great Guernsey Dam was constructed by the Reclamation Bureau. Without exception, so far as I know, the Reclamation Bureau wherever it has constructed a dam or built an improvement of any kind has done so without any professional criticism from any source.

The T. V. A. likewise, not so prominent, perhaps, so far as Government engineers are concerned, not perhaps having such a reputation as the Reclamation Bureau, has constructed some wonderful engineering improvements.

The engineers, as I understand, in the various organizations are not jealous of each other. In what little I have done to observe some of these improvements develop and grow, I have found a remarkable cooperation between, for instance, the Corps of Engineers of the Army, and the engineers of the Reclamation Bureau, and between the Reclamation Bureau and the War Department engineers and the T. V. A. engineers. So far as I know, they have cooperated without any friction, they help each other, and I am very glad to be able to say that it is to the credit of all that they unite and combine in the construction of great engineering undertakings, to make them perfect, useful, and able to last forever.

I would not, however, confer upon any of these engineering organizations the right to fix a policy of the Government for reclamation, for rivers and harbors, for power, for flood-control, or any of these things; and we have not done it in the past. They are called upon for certain professional opinions, and they give them. We usually follow their opinions when they give them to us. They are valuable. I am not complaining about that course of procedure. I agree to it. I approve it. But, Mr. President, as I see the matter, their professional ability does not enable them to fix a governmental policy as to whether, for instance, in the case of a given river, we should devote the money and the ability of governmental officials to constructing dams and flood-control reservoirs on the river from its source to its mouth as a whole, or whether we should divide up the work. That is a question of governmental policy. Often it is quite important to decide it. There is a great deal to be said regarding it; and I have often argued that when we start to develop a river, and all kinds of improvements that may come from its development, we ought to develop it as a whole. We ought to build no dams without considering the location of all other dams on the river, so that their location will not conflict. If we are developing a river for flood-control—and that probably is the greatest reason why we are building dams everywhere in the country—we ought to locate every dam with reference to every other dam, and with reference to every reservoir which God has made and placed there that will hold water.

This bill in section 1 confers upon the Corps of Engineers a policy-making power which, as I see it, is absolutely unnecessary. We have never before done it. We have had no difficulty, so far as I know, with the Government engineers in doing their work; and yet the following language appears in the bill, and my motion is to strike it out of the bill, commencing after the word "documents" in line 9, on page 1, strike out down to and including line 7 on page 2. The matter which is proposed to be stricken out reads as follows:

And that hereafter—

That is a long while. That is the word we usually use when we desire to make legislation permanent for all time.

And that hereafter Federal investigation, planning, and prosecution of improvements of rivers, harbors, and other waterways for navigation and allied purposes shall be a function of and under the jurisdiction of the Corps of Engineers of the United States Army under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided by act of Congress, which said investigations and improvements shall include a due regard for wildlife conservation.

Mr. President, we have been working upon rivers and harbors ever since I can remember. The bulk of all the work has been done by the Corps of Engineers of the Army. We have never before attempted—not until recently, at least—to place the policy of the Government under the control and under the supervision of the Corps of Engineers. As I see the matter, it is unnecessary to do so. There is grave danger ahead if we take this step and follow it to its logical conclusion.

It seems to me, Mr. President, that the Senator from New York [Mr. COPELAND] ought to be willing to accept the amendment and to strike this language from the bill, and not try to tie our Government down to some policy. We may not now know what it is going to be—and what is the necessity of doing it? We have never before had difficulty in that respect. We have done what we wanted to do in Congress about these improvements. From time to time we have passed various laws on the subject. There never has been any complaint, so far as I know, that the Corps of Engineers lacked the proper authority to build a dam. We have mapped the policy, or we have authorized some other organization to make a study and report to us what the policy ought to be. Now we are turning it over to a body of men—high-class, professional, educated men—who in their line probably have no superior anywhere, but they are not selected by the country to fix the policy of the Government. They are given by the bill arbitrary authority to plan; and whether or not they are to go ahead and go further in the matter depends only upon the proper appropriation being made by Congress to carry out their work.

It seems to me, therefore, that this language ought to be stricken out. I have talked with the great Senator from New York, who has the bill in charge, and have tried to induce him to strike out this language and not include it in the bill. He has very courteously declined to do it, which, of course, he has a perfect right to do. The fact that the proponents of the bill are so tenaciously hanging on to this language makes me more suspicious than ever that if we start out on this plan, we shall get into trouble before we logically finish it.

Mr. President, at the present time I do not know that I have anything further to say on the amendment. This language ought to be stricken out, because it does not add to the bill, unless we want to place the policy-making power of the Government in the Corps of Engineers. If we do, then we want this language. There is no other reason, so far as I can see, why we should have it.

The PRESIDING OFFICER. Will the Senator restate his amendment?

Mr. NORRIS. The amendment has not been printed; but it is so simple, so far as the form of the amendment is concerned, that I did not suppose it was necessary to have it printed. The amendment is on page 1, line 9, after the word "documents", to strike out down to and including line 7 on page 2.

Mr. OVERTON. Mr. President, will the Senator yield?

Mr. NORRIS. I yield to the Senator from Louisiana.

Mr. OVERTON. I desire the Senator's interpretation of the language to which he objects, and which he seeks to have stricken out of the bill. I may be wrong, but from what the Senator said, I infer that he believes that the language would vest in the Army engineers authority to proceed with the improvement of rivers and harbors and other waterways for navigation purposes without the prior sanction and authority of the Congress.

What I mean by my inquiry is, Does the Senator interpret this language to mean that the Corps of Engineers would be vested with the power to authorize any project? Does the present language of the bill take that authority out of Congress and place it in the Corps of Engineers; or is the Corps of Engineers simply authorized to plan but not to prosecute a project unless there is an act of Congress authorizing it?

Mr. NORRIS. They cannot prosecute a project unless they have an appropriation; but when the authorization is given, the appropriation will almost automatically follow.

If it is true, Mr. President, as the Senator's question rather intimates, that this language does not confer any power, then why have it in the bill? If it is not any good, let us take it out. It seems to me that ought to be a sufficient answer. If this language is not meant to give the Corps of Engineers any power or authority, then it consists of useless words which we might very well strike out.

Mr. OVERTON. I will say to the Senator that Congress might very well authorize the Corps of Engineers to investigate these different projects and make plans for them——

Mr. NORRIS. All right; we have always done that.

Mr. OVERTON. But not to undertake any of them without an act of Congress authorizing it.

Mr. NORRIS. We have always done that. We have always referred projects to the Corps of Engineers for investigation and appropriated money so that they could carry on the investigations. They report back to us, and we either reject their recommendations or accept them.

Mr. OVERTON. That has been the policy.

Mr. NORRIS. Do we want to change that policy?

Mr. OVERTON. I had nothing to do with the preparation of the proposed legislation, but I think the language in the bill is intended to give specific authority to the Corps of Engineers to make studies and investigations of our rivers and harbors with the view of submitting plans to the Congress for its approval. Then, when the Congress has approved them, the work is to be prosecuted by the Secretary of War.

Mr. NORRIS. Have we not been proceeding in that way?

Mr. OVERTON. We have been. There has been no particular authority for it, but we have been doing that.

Mr. NORRIS. No one has objected to it, and we have gotten along very well. Why not continue in that way?

Mr. OVERTON. My purpose was merely to get the view of the Senator and his interpretation with respect to the language.

Mr. NORRIS. It is my idea that that plan has been satisfactory, has worked all right. No complaint has been made about it by anyone; and if we are to continue the practice, we do not need this language. What would be accomplished by this language unless there is something beyond what appears?

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. BARKLEY. The last river and harbor measure, the act approved August 26, 1937, in the first section, after providing that—

> The following works of improvement of rivers, harbors, and other waterways are hereby adopted and authorized—

Says—

> and that hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and the supervision of the Chief of Engineers.

That makes it permanent law. Whenever Congress in a measure of that sort says that "hereafter" a certain thing shall happen, that makes it permanent. Congress does not have to do it every time it passes a bill on a certain subject. But in the pending measure the language goes much further than that. In the first place, it is unnecessary to put the language into this bill at all in order for the Army engineers to go ahead as they have been going, investigating improvements of rivers and harbors. This is the language in the pending bill:

> And that hereafter Federal investigations, planning, and prosecution—

That is not in the law; it is not in the measure passed a year ago—

> of improvements of rivers, harbors, and other waterways—

Then some new language occurs—

> for navigation and allied purposes.

That never has been in the law before, never has been in any authorization for a river and harbor appropriation before. The War Department has gone on under the language which I have quoted, now in the law which was enacted a year ago; they have made the investigations with respect to improvements of rivers and harbors, but this language goes much further than the former language, and provides that they shall plan and it "shall be a function of and under the jurisdiction of the Corps of Engineers." Heretofore there has been no provision that it should be a function of the Corps of Engineers to do this. They have done it under the authority of Congress.

I wonder why the language is necessary in the pending bill, in view of the fact that the President has sent messages to the Congress with respect not only to navigation and flood control, but with respect to the utilization of power, reforestation, soil conservation, and all the things which are allied with navigation. At least some of us have now come to understand that in the planning of the navigation of our streams there are many allied subjects which go along with navigation. Flood control, possible power, soil conservation, reforestation, recreation, and all the things which go along with the improvement of our rivers are matters of policy to be planned by some Government agency—not necessarily a body of experts, but men who have a conception and vision of the needs of the whole country with respect to all the uses to which water may be put.

I am inclined, therefore, to agree with the Senator from Nebraska, in the first place, that it is not necessary to put this language into the bill in order that the Army engineers may go ahead and do what they have been doing, and the inclusion of this language means that it is an effort to forestall some other agency of the Government, including the National Resources Board, about which we had a fight here the other day in the consideration of the relief measure, and which was included and continued with an increased appropriation above that which was provided in the House bill.

I do not know whether Congress is going to authorize, for instance, the regional planning boards which were provided for in the bill introduced by the Senator from Ne-

braska, and by a bill previously introduced by the Senator from Ohio [Mr. BULKLEY] and myself jointly, which has been under consideration by the Committee on Rivers and Harbors in the House of Representatives, and upon which I believe they made a report, or at least came to a tentative agreement, after eliminating all power to proceed with respect to any plans, and limiting such boards to investigations and recommendations to the President and to Congress, leaving it up to Congress to determine whether the plans suggested should be carried out. If such a law should become effective, of course, these various regional boards would be empowered to investigate not only the matter of rivers, not only navigation, flood control, reforestation, soil conservation, recreation, parking facilities with respect to the reservoirs, and other things created, but would have power to investigate all the natural resources of a region and report to Congress what might be done with them. I do not know whether or not that will ever become a law. We cannot prophesy as to the future. But it seems to me it is a matter worthy of our serious consideration.

In my judgment, we should not, by repeating language in the pending bill merely authorizing improvement of rivers and harbors, attempt to forestall the possibility of some other existing Government agency, or some other agency which may be hereafter created, investigating the whole subject from a broad standpoint, and making its recommendations to Congress. If this language is left in the bill, I am very much afraid it will be construed as an attempt to forestall activity on the part of any other agency of the Government.

Mr. HILL. Mr. President, can the Senator from Nebraska advise the Senate whence this particular language comes?

Mr. NORRIS. I should not want to say, although I think I know.

Mr. HILL. Would it not be logical to conclude that the language is written into the bill for the very purpose of doing what the distinguished Senator from Kentucky has indicated it might do, namely, defeat any other agency of the Government in going forward with any planning?

Mr. NORRIS. I think it would have that effect.

Mr. HILL. It would have that effect, would it not?

Mr. NORRIS. I think so.

Mr. HILL. That would be one way of killing the plan which some have in mind looking to regional planning.

Mr. NORRIS. It would not necessarily kill it, in my judgment, but it would be letting the camel get its nose under the tent. It would be the first step. It leads in that direction. The logical conclusion would be to turn the whole matter over to the Corps of Engineers of the Government.

Mr. HILL. And vest in them powers which heretofore no one has ever dreamed of putting in their hands.

Mr. NORRIS. Never.

Mr. MILLER. Mr. President, will the Senator from Nebraska yield?

Mr. NORRIS. I yield.

Mr. MILLER. Personally I would be in favor of retaining the language, although I doubt very much whether there is any necessity of it. I think the Senate knows very well what I think about the National Resources Planning Board. I should be willing to do almost anything to prevent that Board from exercising any power over anything. But I have no particular quarrel with eliminating this language, because, as the Senator well knows, every authorization bill sets up the agency which is to execute the work provided for. That is done all the time, and will continue to be done.

Mr. NORRIS. That is done without this language. We do not need the language for that purpose.

Mr. MILLER. Let me call the attention of the Senator to one thought suggested by the language in lines 6 and 7 on page 2. I believe the language ought to be amended so as to contain provision that in the execution of these projects due regard should be had for wildlife conservation. I am sure the Senator will remember that in the act of June 22, 1936, as in many other laws recently enacted, such a provision was carried.

Mr. BARKLEY. Mr. President, if the Senator from Nebraska will yield, that provision is carried in the existing law.

Mr. MILLER. I know it is.

Mr. BARKLEY. It is already law, so it is not necessary to insert it again. That requirement attaches to all these investigations and improvements of rivers and harbors conducted by the Secretary of War through the Chief of Engineers.

Mr. MILLER. The thought I had was that beginning on page 1, line 10, I would simply insert the words "and that", just using those two words, "and that the prosecution of said improvements shall be with a due regard for wildlife conservation."

Mr. NORRIS. That already being the law, what is the necessity of repeating it?

Mr. MILLER. I merely want to be certain about it.

Mr. NORRIS. I have no objection to repeating it if the Senator wants it.

Mr. MILLER. As I look upon river and harbor bills and flood-control bills, every one of them is a project bill, and every one of them is more or less governed, notwithstanding its provisions may be general, by the particular provisions of the act creating the project. That was the only thought I had.

Mr. NORRIS. The language in the existing law, which was read by the Senator from Kentucky, contains the word "hereafter," which is used universally when we wish to make permanent a provision of legislation.

I should not wish to argue against the Senator's proposal. I should be willing to have the language repeated. It is harmless.

Mr. MILLER. I do not care to have it repeated if it is not necessary, but I do not want these programs to be undertaken without some regard to the legal requirements.

Mr. BARKLEY. I am heartily in sympathy with what the Senator has said. I think all these undertakings should be entered upon with the view of utilizing every possibility for enjoyment and comfort of the people.

Mr. MILLER. If the Senator from Nebraska and the Senator from Kentucky are of the opinion that it is not necessary to carry that thought forward in the pending bill, but that the present law to which the Senator from Kentucky alluded awhile ago is sufficient to carry over and attach itself to these projects, then well and good.

Mr. BARKLEY. I have not the slightest doubt about that, because the law applies with respect to all such improvements until it is repealed, and it would attach itself to these projects forever or until the law is repealed.

Mr. MILLER. That is a very long time.

Mr. BARKLEY. Yes; that is a long time.

Mr. NORRIS. Mr. President, I want to call attention to another matter. The Senator from Kentucky has read language contained in the existing law, which is now in force. The language which I seek to strike out includes that language, together with certain very important words to which the Senator from Kentucky called attention. The inclusion of certain language in the bill is an illustration of how little by little and step by step some bureau or some organization creeps into power just a little at a time, until finally its power overshadows the whole country.

The Corps of Engineers was given certain powers in existing law. Those powers were placed in the law a year ago. Now it is proposed in the pending measure to give them more powers. This bill would add to the power they already have the following:

Investigation, planning * * * allied purposes.

Mr. President, what does that mean? That language is not in existing law. Does the Senate want the Corps of Engineers to have that power? Under existing law I think

they have possibly every power they should have. What does the expression "allied purposes" mean? The bill says—

That hereafter Federal investigation, planning, and prosecution of improvements of rivers, harbors, and other waterways for navigation and allied purposes.

That language is not in existing law. The inclusion of that language illustrates how these powers gradually come into law; it illustrates how, little by little, the powers expand, one word at a time, until the power of a bureau mounts to the point where we never intended it to go.

What does the expression "allied purposes" mean? It means flood control undoubtedly, without any question whatever. It means water power. It means conservation. It means soil erosion. It means reforestation. That is the additional power which is proposed to be conferred upon the Corps of Engineers, a perfectly honorable, respectable, and highly professional body.

I do not believe we ought to have them decide what the policy shall be with respect to erosion. Do Senators realize that if they give anyone the power to control navigation, the power with respect to flood control will follow? Navigation is the constitutional peg upon which we hang legislation.

There is nothing in the Constitution which directly gives Congress control over matters relating to floods. Control over matters relating to floods involves control over navigation. There is no question whatever about that. We cannot have control of navigation on rivers unless we have control over floods. The floods will come at one time; the waters will rush into the streams and make navigation impossible. Then the dry season comes. The rivers dry up and there is not sufficient water for navigation. Flood control will make the rivers navigable the year around, because dams will be built at the mouths of big reservoirs which will hold back the floodwaters at the times when they cause damage, and the waters will be let out in the dry season when they will be a blessing instead of causing damage. Such works will make the rivers navigable when they otherwise would be dry.

The expression "allied purposes" means control over all such matters. Are we going to have the Government engineers, without any specific legislation by Congress, start out on that great program?

What about erosion? Flood control can be followed back to the little stream which is not any bigger than one's arm, which trickles down the hillside, and washes away the soil into a larger stream, and the floods then come and wash it into a still larger stream. Then finally that soil, which has been washed down, gets into the Mississippi River, we will say. The little erosion, beginning in the little hills thousands of miles away, finally results in the soil coming into the navigable stream. It fills up the stream. It changes its course. It makes the stream which previously was navigable nonnavigable. When navigation is controlled, soil erosion is controlled. So the effect goes back to the individual farms.

Mr. POPE. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. POPE. Let me ask the Senator if he does not think such control would include matters relating to reclamation?

Mr. NORRIS. Yes.

Mr. POPE. Because there is usually a combination of reclamation, navigation, and flood control, and even the matter of fish ladders. So the power referred to would include all those things.

Mr. NORRIS. Yes. Mr. President, I see the Senator shakes his head. Suppose I am wrong about that and it does not include all those matters. The Senator will have to agree that the language includes most of those things.

Mr. POPE. Mr. President, I did not shake my head because I disagreed with the Senator. I shook my head at the thought of turning over to the Army engineers reclamation, the fisheries, flood control, and navigation; taking it away from the authorities who now have charge. That is why I shook my head.

Mr. NORRIS. I thank the Senator for the correction. I am very glad to have it.

Senators, there is no doubt that the language referred to includes water power. If I may be permitted to do so, I will say something that I cannot prove. I criticize no one; I impugn no one's motives; but I say that, in my opinion, if there were no such thing as water power we would not have this proposal before us.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. BARKLEY. In the bill which is under consideration the language is that the engineers shall have charge of "planning" and so forth with respect to "navigation and allied purposes." In the flood-control bill, which carries a similar provision, it is provided that Federal investigation, planning, and so forth, with respect to flood control and allied purposes, shall be a function of and under the jurisdiction of the Corps of Engineers.

Mr. NORRIS. Yes.

Mr. BARKLEY. And I suppose if we had a separate bill dealing with water power it would say, "water power and allied purposes." So that by a series of allied purposes we include everything over which Congress has jurisdiction.

Mr. NORRIS. The Senator is correct. And, Senators, mark this, flood-control legislation is going to follow. It may follow today. Undoubtedly it will be brought up for consideration tomorrow. That is a question in which everyone is interested. There is not a Senator present who has a greater concern than have I in the matter of flood control. Yet whenever I advocate flood control it is said that I do not mean what I say; that I am simply trying to get water power. Flood control, in my judgment, is one of the greatest issues before the American people, and will so remain until the question is settled.

Mr. President, I remember the time when I first advocated on the Senate floor the building of dams near the source of our great streams, where the heavy waters flow, as a protection against floods on the Mississippi River a thousand miles away. I was then laughed at. Comments appeared in the newspapers after the bill was defeated. Remarks were made by engineers all over the country, many of them Army engineers, concerning my efforts. The Army engineers made the remarks in very respectful and courteous language. I do not complain about that. They had the right to make their criticism. As I now remember, the criticism that came from the Army engineers could not be objected to, except, of course, I thought the criticism was wrong.

But the country—as perhaps it should have done—believed the engineers and not me. My plan was said to be entirely impossible. It was not workable. In the first place, it would cost too much money. Too many dams would have to be built. There were too many headwaters.

Mr. President, I have seen the development of this activity from the time of building levees and digging out channels in order to control floods. I have seen millions of dollars spent, honestly, and with the very best of intention, but with the result of failure to meet the problem. I have seen public sentiment change, until what was once regarded as a crazy notion is now the accepted theory for the control of floods. That theory of controlling floods is now accepted by all engineers, or nearly all engineers, over the country. If we had started that way 50 years ago, we should not have the yearly calamity on the Mississippi River and the Ohio River, with the resultant destruction of hundreds of millions of dollars' worth of property and the loss of human lives. The streams would all be controlled. They would be normal practically the year around. We are coming to that condition.

However, Mr. President, I do not want to turn over to the Corps of Engineers of the Army the policy-making power. We have seen how, little by little, additional powers have crept in year after year. The next bill to follow, the flood-control bill, has in it more of such powers than the pending bill. Such powers are attached to bills which everyone favors.

Not long ago we passed a joint resolution turning over some of these powers to the Army engineers; and the President sent a message vetoing the joint resolution, on the ground that he did not want to place in the engineers the policy-making power of government. I suppose the President would not veto the pending bill, or the flood-control bill, because we are so near the end of the session, and everybody favors the other features of the bills. However, I believe that if the President follows out his veto message, which I shall read when we take up the flood-control bill, there is only one thing which would prevent a veto of either or both the present bills if they contained such provisions. That is the fact that Congress is about to adjourn, and it would be almost a calamity to have Congress adjourn without legislating upon flood control.

I appeal to Senators. We are going further and further with every session of Congress.

As I stated a while ago, the real reason behind the attitude of the engineers is that they do not want power developed by high dams. Not all the dams would develop power. Some would not develop any power. However, many would develop considerable power. When high dams are built for flood control, it would be a sin not to utilize the power generated by falling water in order that the people of the country might have the benefit of cheaper electricity in their homes and on their farms.

Mr. HILL. Mr. President, will the Senator yield?

Mr. NORRIS. I yield.

Mr. HILL. No doubt the Senator recalls that if the report and recommendation of the Army engineers had been followed, not a single high dam would have been built on the Tennessee River unless that dam had been built by private power companies.

Mr. NORRIS. The Senator is absolutely correct; and I thank him for calling my attention to that bit of history. If Senators will run over the history of our country, they will observe that the Corps of Engineers have never built power dams unless they were specifically instructed to do so. In my judgment, their policy would not be in that direction.

I want to be understood as casting no reflections. I admit that there are two sides to the question, and I admit that the Army engineers have the right to their viewpoint. They have been educated in one school all their lives. To a great extent they have been associated with great projects in which almost untold wealth has been involved. Those interested in the projects wanted to make money out of power, and did not want the people to have cheap power. It is not surprising that the engineers should have a viewpoint and an attitude antagonistic to the development of power by public means.

Mr. President, if there were any reason for the language in question staying in the bill, I could see why there might be a contention over it. However, all the language, except the new language, is already law. If Senators are opposed to eliminating the language in question, they must have a reason for leaving it in. I have heard none. I should like to hear one.

Mr. COPELAND. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. MILTON in the chair). The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Byrd	Guffey	Lodge
Andrews	Byrnes	Hale	Logan
Ashurst	Capper	Harrison	Lonergan
Austin	Caraway	Hatch	Lundeen
Bailey	Connally	Hayden	McAdoo
Bankhead	Copeland	Herring	McGill
Barkley	Dieterich	Hill	McKellar
Berry	Donahey	Hitchcock	McNary
Bilbo	Duffy	Holt	Maloney
Bone	Ellender	Hughes	Miller
Borah	Frazier	Johnson, Calif.	Milton
Brown, Mich.	George	Johnson, Colo.	Minton
Brown, N. H.	Gerry	King	Murray
Bulkley	Gibson	La Follette	Neely
Bulow	Glass	Lee	Norris
Burke	Green	Lewis	O'Mahoney
Overton	Russell	Thomas, Utah	Wagner
Pepper	Schwartz	Townsend	Walsh
Pittman	Schwellenbach	Truman	Wheeler
Pope	Sheppard	Tydings	
Radcliffe	Shipstead	Vandenberg	
Reames	Smith	Van Nuys	

The PRESIDING OFFICER. Eighty-five Senators have answered to their names. A quorum is present.

TERMS OF DISTRICT COURT AT HUTCHINSON, KANS.

The PRESIDING OFFICER (Mr. MILTON in the chair) laid before the Senate the amendment of the House of Representatives to the bill (S. 3373) to provide for holding terms of the district court of the United States at Hutchinson, Kans., which was, to strike out all after the enacting clause and to insert:

That section 82 of the Judicial Code, as amended (U. S. C., title 28, sec. 157) is amended to read as follows:

"The State of Kansas shall constitute one judicial district, to be known as the district of Kansas. It is divided into three divisions, to be known as the first, second, and third divisions of the district of Kansas. The first division shall include the territory embraced on the 1st day of July 1910 in the counties of Atchison, Brown, Chase, Cheyenne, Clay, Cloud, Decatur, Dickinson, Doniphan, Douglas, Ellis, Franklin, Geary, Gove, Graham, Jackson, Jefferson, Jewell, Johnson, Leavenworth, Lincoln, Logan, Lyon, Marion, Marshall, Mitchell, Morris, Nemaha, Norton, Osage, Osborne, Ottawa, Phillips, Pottawatomie, Rawlins, Republic, Riley, Rooks, Russell, Saline, Shawnee, Sheridan, Sherman, Smith, Thomas, Trego, Wabaunsee, Wallace, Washington, and Wyandotte. The second division shall include the territory embraced on the date last mentioned in the counties of Barber, Barton, Butler, Clark, Comanche, Cowley, Edwards, Ellsworth, Finney, Ford, Grant, Gray, Greeley, Hamilton, Harper, Harvey, Hodgeman, Haskell, Kingman, Kiowa, Kearny, Lane, McPherson, Morton, Meade, Ness, Pratt, Pawnee, Reno, Rice, Rush, Scott, Sedgwick, Stafford, Stevens, Seward, Sumner, Stanton, and Wichita. The third division shall include the territory embraced on the said date last mentioned in the counties of Allen, Anderson, Bourbon, Cherokee, Coffey, Chautauqua, Crawford, Elk, Greenwood, Labette, Linn, Miami, Montgomery, Neosho, Wilson, and Woodson. Terms of the district court for the first division shall be held at Leavenworth on the second Monday in October; at Topeka on the second Monday in April; at Kansas City on the first Monday in October and the first Monday in December; and at Salina on the second Monday in May; terms of the district court for the second division shall be held at Wichita on the second Mondays in March and September, and at Hutchinson on the second Monday in June and the first Monday in November, when suitable rooms and accommodations for holding terms of the court shall be provided at Hutchinson free of cost to the United States or until, subject to the recommendation of the Attorney General of the United States with respect to providing such rooms and accommodations for holding court at Hutchinson, a public building containing such suitable rooms and accommodations shall be erected at such place; and for the third division at Fort Scott on the first Monday in May and the second Monday in November. The clerk of the district court shall appoint three deputies, one of whom shall reside and keep his office at Fort Scott, one at Wichita, and the other at Salina, and the marshal shall appoint a deputy who shall reside and keep his office at Fort Scott and the marshal shall also appoint a deputy, who shall reside and keep his office at Kansas City."

Mr. McGILL. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

RIVER AND HARBOR AUTHORIZATIONS

The Senate resumed the consideration of the bill (H. R. 10298) authorizing the construction, repair, and preservation of certain public works on rivers and harbors, and for other purposes.

Mr. COPELAND. Mr. President, for the benefit of Senators who may not have been here while the Senator from Nebraska [Mr. NORRIS] was speaking——

Mr. LOGAN. Mr. President, will the Senator from New York yield to me?

Mr. COPELAND. I yield.

Mr. LOGAN. I desire to call attention to the fact that a conference report was submitted by me some time ago on House bill 2904. It has not been finally disposed of. The Senator from Utah [Mr. KING] stated that he desired to make a speech on it, which probably would take half an hour or such a matter. I was wondering if the Senator from New York would be willing to yield at this time to me in order that I might have action on the report?

Mr. COPELAND. No, Mr. President, I do not feel that I can yield now.

Mr. LOGAN. I am merely anxious to get the report out of the way.

Mr. COPELAND. I understand, but I think, if the Senator will be patient, we can conclude the consideration of the river and harbor bill within a few minutes.

Mr. LOGAN. I am the most patient man in the world, I think, but it takes much patience sometimes to wait continually.

Mr. COPELAND. If the Senator were chairman of eight conference committees he would know that much patience is required.

Mr. President, the Senator from Nebraska is distressed at the language found on the first page of the pending bill. That language reads:

> And that hereafter Federal investigation, planning, and prosecution of improvements of rivers, harbors, and other waterways for navigation and allied purposes shall be a function of and under the jurisdiction of the Corps of Engineers of the United States Army—
>
> And so forth.

Mr. President, we have done this for a hundred years. Practically the identical language is found in the acts of 1935, 1936, and 1937, and it is found, I think, in all other previous river and harbor bills.

What does this language mean? I hope that Senators who are interested will look at the bill. We outline in this bill certain projects which are authorized by reason of the passage of the bill. It is needless to say that the job of the Army engineers is not finished when we complete the authorization of these projects. There are other rivers, other projects, other problems, and, I presume, there will be to the end of time. There will probably always be projects which must be surveyed, examined, planned and considered, and ultimately presented to the Congress. Nothing can be done by the engineers on unauthorized projects except to report to committees of the Congress—the Commerce Committee of the Senate and the corresponding committee, the Committee on Rivers and Harbors, of the House of Representatives. The Army engineers are directed to go forward with authorized projects, but even in the case of those projects they cannot go forward until appropriations are made.

I again quote from the bill:

> That hereafter Federal investigation—

Investigation of what and for what? Investigation for navigation, planning for navigation, prosecution of improvements of rivers and harbors and other waterways for navigation.

Then comes the language which is regarded as being ambiguous, and possibly it is. It reads, "and allied purposes."

I think we should change that to read what it was intended to mean—namely, "and purposes allied to navigation." All these words relate to examinations and surveys for navigation, and they mean nothing else.

Mr. BARKLEY. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. BARKLEY. Is it not true that surveys are made after an authorization by Congress specifically set out in a bill authorizing surveys, the conditions of such surveys being set out also in the act that provides for them, and that these authorizations are of projects of which surveys have been previously authorized and made and reports submitted upon the survey? So that, whether it authorizes a survey or after a survey is made, authorizes the improvement itself, each one of these bills carries with it provision with respect to the activities of the Corps of Engineers, whether it is a survey or whether it is the construction of a project, and it is not necessary to tie this up perpetually with plans for all other purposes that might be considered as allied with navigation?

Mr. COPELAND. On the contrary, the committee over which I have the honor to preside, the Commerce Committee of the Senate, and the Rivers and Harbors Committee of the House may join and send a request to the Army engineers to make a survey. It is not necessary to have it passed on by the Congress. That is all this is.

I could take the laws as they have been passed from last year back, perhaps, for a century and point out the same or similar language.

> That hereafter investigations—

That is the law of 1937.

> That hereafter Federal investigations—
>
> And so forth—
>
> shall be under the Board of Army Engineers.

That is from the act of 1935.

The fear of this language is merely a straw man, and nothing else. There is no reason in the world why we should be worried about it.

I listened with great interest to what the Senator from Nebraska [Mr. NORRIS] said. I also heard what the able Senator from Arkansas [Mr. MILLER] said a little while ago. He said he was not very keen about the National Resources Board. I wish to say that only a few days ago, when the relief measure was before the Senate, I spoke for 10 or 12 minutes urging increased appropriations for the National Resources Board, because, with all my heart, I believe in it. It has to do with advance planning for our country, planning which has to do with the welfare of all our people, planning with respect to the national resources of the country, and as to how they may be preserved and conserved. I would not have anything taken away from the National Resources Board.

If I had my way, I would give it more power, not to execute projects but to do exactly what we are asking the Corps of Army Engineers here to do, to bring back to us the result of surveys, to report to the Commerce Committee of the Senate and the Rivers and Harbors Committee of the House their recommendations, saying, "This is economically justifiable; this is a wise project, and in the near future it should be given attention." That is what this provision intends; that is a power that has been reposed in the Corps of Army Engineers for, as I have said, perhaps a century, and a power which we have continued to give them.

I was not altogether pleased with some things which have been said about the Army engineers. They have great monuments. The Bonneville Dam, a tremendous structure, was built by the Army engineers. The Fort Peck Dam was also built by the Army engineers. The country is spotted here and there with great undertakings and projects which have been completed by the Corps of Army Engineers. Fourteen of the great dams in the Ohio River in the Muskingum district were recently completed by them.

Mr. MINTON. Mr. President, were not the Army engineers in those instances carrying out a policy declared by Congress and not any policy declared by the Army engineers?

Mr. COPELAND. Yes; and there is not any proposal to the contrary here.

Mr. BARKLEY. Mr. President, if the Senator will yield there, conferring authority to plan certainly presupposes the creation of a policy. Of course, it is subject to the approval by Congress, but still, in its initial stages, it must be begun by whatever the planning authority is. So when we insert in the bill a provision that the Army engineers shall have the authority not only to do what Congress authorizes them to do but to plan with respect to other things and with respect to whatever might be regarded as allied with navigation, that is a term that is impossible of misconstruction, and it is bound to presuppose, it seems to me, in advance of any action by Congress, that there will be a sort of planning by the engineers with respect to what Congress shall do.

Mr. OVERTON. Mr. President, will the Senator from New York yield there?

Mr. COPELAND. I yield.

Mr. OVERTON. Are we not in the same position with reference to the National Resources Board? They have the right to plan.

Mr. BARKLEY. Yes; that is true. If the language here is intended to give the Army engineers the same right to plan, then we have duplication; and if it does not intend to

give the Army engineers the same right to plan, then it is unnecessary, as I think.

Mr. OVERTON. Mr. President, of course, in all of this planning and in the execution of these projects with reference to navigation and flood control, we ought to have the benefit of planning and investigation and execution by a body of trained experts.

If I had to choose between the National Resources Committee and the Corps of Army Engineers for planning flood-control work and navigation work I should unhesitatingly select the Corps of Army Engineers, because the Corps of Army Engineers has been engaged in this work for 100 years and more, throughout the history of our Government; and I do not think we could find anywhere a better or more capable body of men for planning and prosecuting works of this character, or a body of men who would be freer from political influence, and who would judge projects more solely upon their merits.

Mr. COPELAND. I thank the Senator for what he has said. I endorse every word of what he has said. I hate to say that I have more confidence in the Corps of Engineers than in anyone else, because there might be an invidious thought there; but I could have no more confidence in anybody in the world than I have in the Corps of Engineers.

Now, I desire to return to what the Senator from Kentucky [Mr. BARKLEY] has said about planning. Is it not somebody's business to decide, in planning, whether the channel of a river is to be dug out and made deeper, whether levees are to be built and the banks raised up, or whether a reservoir is to be built to hold back the waters until the dry time of the year? Should it not be somebody's business to make plans, about what? About navigation. That is what we are talking about. Mr. President, bear in mind all the time that we are discussing navigation, Federal investigation for navigation, planning for navigation, prosecution of improvements of rivers and harbors, when they are authorized, for navigation; that is all.

Mr. MINTON. Mr. President, will the Senator yield?

Mr. COPELAND. I yield.

Mr. MINTON. Following the word "navigation", the bill says "and allied purposes". What does the Senator understand by that language?

Mr. COPELAND. I think it is ambiguous. I told the Senator from Nebraska so yesterday. That language might be misinterpreted. "Allied purposes" might mean, as he says, reclamation and various other things. I think it ought to be changed to read "and purposes allied to navigation."

Mr. BARKLEY. Does the Senator think that really changes the meaning?

Mr. COPELAND. I do not know whether it does or not.

Mr. BARKLEY. Why is not the Senator willing to leave the language of the bill as it now is in the law which I quoted awhile ago, the act of 1937. Why is it necessary to change it? That is the law now. It is in operation, and will be in operation until Congress changes it. Why is it necessary to put this other ambiguous language in the bill? If it is unnecessary, it certainly ought not to be included. Is it the purpose to include something which the Army engineers have not been doing all this time? They have been doing all they needed to do. They would have full authority to investigate all the matters that they are now investigating, because they now have that authority in the law. If that is what they want, and if it is necessary to repeat it in each act—which I do not think is the case, because it is permanent—why is it not sufficient to have the language as it is in the act which is now the law?

Mr. COPELAND. So far as I am concerned, I want to make it clear and I want the language of the bill to be clear that what we are talking about is navigation. If the Senator from Kentucky says the words "and allied purposes" are ambiguous, strike them out; I am satisfied, because I do not want the provision to mean anything but navigation.

Mr. BARKLEY. I myself do not see why there should be any change in the language which is now in the law. If it is necessary to repeat that language in this bill, I have no objection simply to inserting in the bill, instead of the language which is here, the language which is already in the act of 1937, to which nobody has made any objection.

If the Senator would agree to substitute the language of the last act, which is now the law anyhow, I do not think there would be any need for any further discussion.

Mr. COPELAND. Mr. President, I beg my leader not to press the matter. I do not want to have another conference. It would mean another conference.

Mr. BARKLEY. I should like to relieve the Senator from New York, who, I know, is burdened with conferences; but it is more important that we get this thing right than that we not have another conference.

Mr. COPELAND. Is there any mistaking the language? Let us take the first page: "Federal investigation" for navigation; "planning" for navigation; "prosecution of improvements of rivers, harbors, and other waterways for navigation." That is exactly what the language is, and I have stated what it means. So far as the other language is concerned, if there is ambiguity in it, and a possibility that there might be read into it by somebody some sinister purpose, I am perfectly willing that it should be taken out, and I do not think the House would resist that course.

Mr. BARKLEY. Mr. President, the Senator from Nebraska [Mr. NORRIS], who offered the amendment, is not on the floor at the moment. I desire to make a parliamentary inquiry. Is it permissible to perfect the language before a vote is taken on whether or not it shall be stricken out?

The PRESIDING OFFICER. It is.

Mr. BARKLEY. Then, as a substitute for the motion of the Senator from Nebraska, I move to strike out the language which he proposes to strike out and to insert in lieu thereof the language of the present law, just as it is.

Mr. NORRIS entered the Chamber.

Mr. BARKLEY. The Senator from Nebraska was absent for a short time. In order to perfect the amendment, I have offered a substitute proposing to insert, in lieu of the language the Senator seeks to strike out, the language of the present law without any change whatever.

Mr. NORRIS. I have no objection to that, although, of course, it is entirely unnecessary.

Mr. BARKLEY. It is unnecessary; but, in order that there may be no controversy about it, I offer that amendment.

Mr. COPELAND. What is the Senator's proposal?

Mr. BARKLEY. This is the language which I would substitute:

> And that hereafter Federal investigations and improvements of rivers, harbors, and other waterways shall be under the jurisdiction of and shall be prosecuted by the War Department under the direction of the Secretary of War and the supervision of the Chief of Engineers, except as otherwise specifically provided by act of Congress.

Mr. COPELAND. Very well, Mr. President. So far as I am concerned, I am willing to accept the amended amendment.

Mr. NORRIS. Mr. President, I accept the suggested amendment of the Senator from Kentucky, if that is necessary.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska [Mr. NORRIS] as modified.

Mr. KING. Mr. President, I should like to ask the Senator from New York just what the controversial feature is, and what difference there is between the provision which the committee seeks and the provision which the Senator from Nebraska seeks, and what modification of either or both is suggested by the Senator from Kentucky.

Mr. COPELAND. The bill as it came to us from the House, at the bottom of the first page, read as follows:

> Hereafter Federal investigation, planning, and prosecution of improvements of rivers, harbors, and other waterways for navigation and allied purposes shall be a function of and under the jurisdiction of the Corps of Engineers of the United States Army.

The fear is that that might be imposing upon or granting to the Army Engineers wider and larger powers than they

have at present. I have tried to explain that as I understand the language, it means Federal investigation for navigation, planning for navigation, and prosecution of improvements for navigation; but I have said to the Senator from Kentucky and the Senator from Nebraska that I am willing to accept the amendment.

Mr. KING. Mr. President, may I ask the Senator from New York a question?

Mr. COPELAND. Certainly.

Mr. KING. Does this mean that we are committing to the War Department or its engineers the exclusive authority to determine where improvements shall be made, what rivers shall be dredged, and, generally, what work shall be done in the matter of improving our navigable waters?

Mr. NORRIS. Mr. President, if the Senator will yield, I should like to suggest to the Senator from Utah that we are substituting, no matter what we think about that, what is now the law. We cannot repeal it, and this is just a proposal to reenact the same law. As we have now agreed on the amendment, I do not think it would have any particular effect whatever. We are simply putting in this bill, as an amendment, a copy of existing law.

Mr. KING. Mr. President, if the Senator will yield, I desire to inquire of the Senator from Nebraska whether the present law contemplates that the War Department, at its own will and pleasure, may make surveys of the streams of the United States, and determine where improvements shall be made for navigation or any other purpose, regardless of the expressions or declarations of Congress by resolution or by law.

Mr. COPELAND. May I answer for the Senator from Nebraska? If he is not satisfied with my answer, he will correct me. For 100 years—ever since the Senator from Utah and I came into the Chamber [laughter]—this has been the practice——

Mr. KING. That is not true of the Senator from Nebraska.

Mr. COPELAND. No; he is much younger than that. He came in later. He came in after the Civil War. [Laughter.]

Mr. BARKLEY. Does the Senator think he is going to get anywhere with the Senator from Utah by assuming any such position as that? [Laughter.]

Mr. COPELAND. My relations with the Senator from Utah are such that he forgives me for anything I may say. If he does not like it in the RECORD, he will cut it out.

Mr. NORRIS. Mr. President, if the Senator will yield I should like to offer another amendment.

Mr. KING. The Senator from New York has not yet answered my question, notwithstanding his age and wisdom.

Mr. COPELAND. The Army engineers have a book which very appropriately is called the Blue Book. It contains a list of a billion dollars worth of projects for which surveys have been made, but probably two-thirds of them were reported back to Congress as unwise.

To answer the Senator's question categorically, the Army engineers cannot on their own initiative enter upon a survey. A survey is ordered either by an act of Congress or by request of one of the standing committees, the Commerce Committee of the Senate, or the Rivers and Harbors Committee of the House. After they have passed it back to us with a survey, when we prepare one of the big omnibus bills, someone interested in the survey will ask that his project be included, but unless it has been approved by the engineers it cannot get into the bill, and it cannot get into the bill until it has first passed the House committee and the House, and the Senate committee and the Senate. So they have no power to initiate activities.

Mr. KING. Just a few words, Mr. President, and I apologize for interrupting the proceedings.

A number of years ago, when there was before the Senate an appropriation bill for rivers and harbors calling for an enormous appropriation, I was opposing it, as was the then Senator from Iowa, Senaton Kenyon. At that time I spent a month examining every river and harbor project from the days of Washington down until that moment. There were several hundred; indeed, my recollection is that more than a thousand surveys had been made, and that more than $1,385,000,000 had been expended on so-called river and harbor improvements.

I discovered that many hundred so-called river improvements had been made when the inhabitants of a given State did not know of the existence of the little creek, bayou, swamp, or rivulet upon which thousands and tens of thousands of dollars had been expended.

I recall that when the bill was under consideration a certain little creek in the State of New Jersey, the State from which the present Presiding Officer comes (Mr. MILTON in the chair) was mentioned, and one of the Senators from New Jersey rose with considerable surprise and stated that although he had been born and reared there, he had never heard of that stream. Yet thousands of dollars had been expended upon it.

My investigations revealed the fact that many of the streams, bayous, swamps, and rivulets which had sucked out of the Treasury hundreds of millions of dollars were of no use whatever. We have squandered money in many States, squandered it without any benefit whatever being received.

I was prompted to inquire whether the War Department on its own initiative could spend money and make surveys upon rivers, and swamps, and bayous, and rivulets, as has been done in the past. I think there ought to be a different plan for the determination of the places where money shall be expended and as to the amounts which shall be expended. I have not been satisfied with the enormous appropriations which have been made for so-called river and harbor improvements, and I think that the people in the future will condemn our policy as wasteful and extravagant without any commensurate benefit.

Mr. NORRIS. Mr. President, I should like to say to the Senator from Utah that I agree with what he has said. We are presented, however, with this predicament. The amendment as now agreed upon contains a reenactment of existing law. My contention is, and I have no doubt that I am right, that the amendment does not add a thing. I would just as soon leave it out, but some of the Senators want to insert it again, and I have no objection.

Mr. KING. Mr. President, I appreciate very much the position of the Senator from Nebraska, and I am in entire accord with his position and his views.

River and harbor bills for many years were denominated "pork barrel bills," and that term was justly applied to the measures which were passed and to the profligate expenditure of the money of the taxpayers of the United States.

Mr. COPELAND. Mr. President, I had not intended to say a word, but I must do so now. A "pork barrel" bill came about in this way; a report would come in from the committee, and then every project offered would be accepted, whether or not it had ever been studied or reported upon or approved by the Army engineers. Not since I have been chairman of the Committee on Commerce has a "pork barrel" bill been reported to the Senate. As to every project included in the bills brought in a survey was first ordered and completed with the recommendations of the Army engineers explicitly regarding the utility of the proposed improvement, and its economic justification and wisdom of completion. Not one item has gone in which has partaken of the nature of the old time "pork barrel" system.

I apologize to the Senator from Utah, but I just had to make this defense.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Nebraska.

The amendment was agreed to.

Mr. NORRIS. Mr. President, I offer another amendment. I have conferred with the Senator from New York about it, and he has no objection.

The PRESIDING OFFICER. The clerk will state the amendment.

The LEGISLATIVE CLERK. On page 14, at the end of line 22, it is proposed to insert the following:

Provided further, That the authority hereby granted to the Secretary of War shall not extend to or include lands held or acquired by the Tennessee Valley Authority pursuant to the terms of the Tennessee Valley Authority Act.

Mr. COPELAND. Mr. President, the Senator did not take the new bill I gave him when he indicated where the amendment was to come. It should be inserted on page 7.

Mr. NORRIS. I think it ought to go on page 14 also, where the other provisos are. It probably ought to go on page 7, too.

Mr. COPELAND. Suppose we say that it shall be inserted at the appropriate place.

Mr. NORRIS. Very well. We do not know now that this is necessary, but it is a safeguard against any possibility of error. I do not think any attempt would be made through the Secretary of War to give highways to anyone across reservations where the T. V. A. had authority. I do not anticipate he would do anything of that kind. But I have thought that out of abundance of caution this amendment should be inserted.

Mr. COPELAND. Let us insert it at both places.

Mr. NORRIS. Very well.

Mr. COPELAND. It will come on page 7, line 6, after the words "Secretary of War."

Mr. NORRIS. Mr. President, I offer the amendment where I have already offered it, and also on page 7, line 6, after the words "Secretary of War."

Mr. COPELAND. I have no objection to the amendment.

The PRESIDING OFFICER. The clerk will state the second amendment offered by the Senator from Nebraska.

The LEGISLATIVE CLERK. On page 7, line 6, after the words "Secretary of War", it is proposed to insert the following:

Provided further, That the authority hereby granted to the Secretary of War shall not extend to or include lands held or acquired by the Tennessee Valley Authority pursuant to the terms of the Tennessee Valley Authority Act.

The amendment was agreed to.

The PRESIDING OFFICER. The question is on agreeing to the same amendment, which has been stated, on page 14, after line 22.

The amendment was agreed to.

Mr. COPELAND. By inadvertence, a survey of Oyster Creek, Anne Arundel County, Md., was omitted. I ask unanimous consent that this item may be included.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 11, after line 7, it is proposed to insert the following:

Oyster Creek, Anne Arundel County, Md.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

The PRESIDING OFFICER. If there are no further amendments to be offered, the question is on the engrossment of the amendments and the third reading of the bill.

The amendments were ordered to be engrossed and the bill to be read a third time.

The bill was read the third time and passed.

ALCEO GOVONI

The PRESIDING OFFICER (Mr. MILTON in the chair) laid before the Senate the amendments of the House of Representatives to the bill (S. 865) for the relief of Alceo Govoni, which were, on page 1, line 6, after the name "Govoni", to insert "of Wellesley Hills, Mass.", in line 8, to strike out "collided with" and insert "was struck by a", and in line 9, to strike out No. 214243."

Mr. WALSH. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

BOSTON CITY HOSPITAL, DR. DONALD MUNRO, AND OTHERS

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2413) for the relief of the Boston City Hospital, Dr. Donald Munro, and others, which were, on page 1, to strike out all after line 2, down to and including "1935", in line 9 of page 2, and insert "That the Secretary of the Treasury is hereby authorized and directed to pay, out of any money in the Treasury appropriated for medical care and treatment of officers, enlisted men, and civilian employees of the Army, to the Boston City Hospital of Boston, Mass., the sum of $585.67; to Dr. Donald Munro, of Boston, Mass., the sum of $401; to Evelyn Burns, nurse, of Dorchester, Mass., the sum of $130; to Kathleen A. Conroy, nurse, of Boston, Mass., the sum of $120; to Ethel Glennon, nurse, of Atlantic, Mass., the sum of $215; to Margaret D. Gaven, nurse, of Cambridge, Mass., the sum of $245; to Patricia V. Souser, nurse, of South Boston, Mass., the sum of $25; to Hazel Trott, nurse, of Brookline, Mass., the sum of $45; to Gladys Drake, nurse, of Weymouth, Mass., the sum of $85; and to Paul A. Leahy, of Marblehead, Mass., the sum of $510; in all, $2,361.67, in full settlement of all claims against the United States for hospital, medical, and nursing services rendered Lt. Paul A. Leahy, United States Army, now retired, from August 2 to December 23, 1935, on account of personal injuries sustained by him while on authorized leave of absence from his post; and in full satisfaction of the claim of Paul A. Leahy against the United States for payments made by him in connection with said services"; and to amend the title so as to read "An act for the relief of the Boston City Hospital, and others."

Mr. WALSH. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

UNIFORM METHOD FOR EXAMINATIONS FOR PROMOTION OF WARRANT OFFICERS

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 2474) to provide a uniform method for examinations for promotion of warrant officers, which was, in line 3, after the word "officer", to insert "of the Navy."

Mr. WALSH. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

ELIZABETH F. QUINN AND SARAH FERGUSON

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 2770) for the relief of Elizabeth F. Quinn and Sarah Ferguson, which were, on page 1, line 6, to strike out "$1,000" and insert "$750"; in line 7, to strike out "$1,000" and insert "$1,250", and in line 11, to strike out "they were" and insert "the automobile in which they were riding was."

Mr. WALSH. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

ARTHUR T. MILLER

The PRESIDING OFFICER laid before the Senate the amendment of the House of Representatives to the bill (S. 3379) for the relief of Arthur T. Miller, which was on page 1, line 7, strike out all after "for" down to and including "Arkansas" in line 11, and insert "the Government indemnity on a purebred cow which was found to be a reactor, condemned, and shipped to the stockyards, where its identity was lost until after slaughter, thus preventing payment of said indemnity in accordance with the Bureau of Animal Industry's campaign to eradicate Bang's disease".

Mrs. CARAWAY. I move that the Senate concur in the amendment of the House.

The motion was agreed to.

WATER-POLLUTION CONTROL—CONFERENCE REPORT

Mr. COPELAND. Mr. President, I submit a conference report and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be read for the information of the Senate.

The report was read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 2711) to create a Division of Water Pollution Control in the United States Public Health Service, and for other purposes, having met, after full and free conference have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with amendments as follows:

In the amendment of the Senate strike out subsection "c" of section 7, and strike out all of sections 8 and 9, and the Senate agree to the same.

ROYAL S. COPELAND,
HATTIE W. CARAWAY,
JOSEPH F. GUFFEY,
Managers on the part of the Senate.
J. J. MANSFIELD,
RENÉ L. DEROUEN,
GEORGE N. SEGER,
ALBERT E. CARTER,
Managers on the part of the House.

The PRESIDING OFFICER. Is there objection to the present consideration of the report?

There being no objection, the Senate proceeded to consider the report.

Mr. COPELAND. Mr. President, this is the conference report on the water pollution bill, which has been the subject of conference for 2 years, and we have finally reached a conclusion.

Mr. NORRIS. A full agreement?

Mr. COPELAND. A full agreement.

Mr. MILLER. Mr. President, was the Senate bill or the House bill adopted in the conference?

Mr. COPELAND. I think we could all take glory. It is not fully satisfactory to every group. It is a composite bill. The Senator from Connecticut [Mr. LONERGAN] is disappointed, and I think the Senator from Kentucky [Mr. BARKLEY] would have liked to have the committee go further than we have gone. But I want the Senate to know that we were sadly restricted and limited by the rules. We could not, because of the rules, make changes which would have been desirable. Finally, however, we came to a unanimous agreement.

Mr. MILLER. I am in favor of the proposed legislation, and want to see the report adopted, regardless of what it may contain within the limits of the two bills. I am very much in favor of it being made stronger than either bill made it.

Mr. COPELAND. I am also. I have made a pledge to the Senator from Connecticut [Mr. LONERGAN] that I will do all I can to help him the next time.

Mr. OVERTON. Mr. President, have the conferees agreed upon the bill?

Mr. COPELAND. Yes.

Mr. OVERTON. Does the bill require municipal corporations to install sewage-treatment plants?

Mr. COPELAND. No; it does not.

Mr. OVERTON. It does not?

Mr. COPELAND. It does not go so far as a great many persons would like to have it go. It goes just as far as we could go.

Mr. BARKLEY. I wish to say just a word with reference to the conference report. I wish to congratulate the Senator from New York and his colleagues on the conference committee for having been able to arrive at an agreement which for the first time in the history of this country recognizes as a national problem the question of stream pollution.

The bill was discussed somewhat in detail when it was before the Senate nearly 2 years ago, and also when it was before the House at the same time, as well as in hearings which were held by both the House and Senate committees. It is, manifestly, and is so recognized by all who are interested in the prevention of stream pollution, a modest beginning in the field of preserving the health and the lives of the people who are compelled to consume the waters of our streams, as well as to preserve the life of fish in the streams.

There are many communities in the United States the health of whose people has been endangered by the pollution of the streams out of which the people secure their drinking water. The communities have endeavored in a local way to cope with the situation, but they have not yet been able to install sufficient stream purification machinery in all cases to avoid the dangers of typhoid and other diseases, which I need not mention, with which the Senator from New York is more familiar than am I, which are caused by impure water.

Nearly 2 years ago a similar bill passed the House of Representatives. The bill was introduced in the House by Representative VINSON of Kentucky, and a companion bill was introduced by me in the Senate. The House passed the bill and it came to the Senate. When it came to the Senate a group of very respectable opinion felt that the bill ought to go further by providing for some sort of national enforcement of the provisions of the measure. An amendment was inserted in the bill providing that after 3 years, upon certain conditions being complied with, and upon application of the Surgeon General of the United States, and after investigation by the health departments of the various States, the Attorney General might institute legal proceedings to enforce the provisions of the Stream Pollution Act.

So far as I am concerned, I not only have no objection to that, but I rather have favored the idea. However, it was impossible to get that feature into the bill. There was serious objection to it on the part of those representing the other legislative body.

It was suggested that in event Federal enforcement were provided in the measure, it should be postponed for 5 years; so I believe it was finally thought by the conferees that we might well proceed now with this modest beginning, and if during that 5-year period of experiment it was found necessary to have Federal enforcement by the institution of criminal proceedings, or by any other method, Congress would then be in a better position, as the result of experience, to bring about Federal enforcement than it is now, when it is without any experience whatever. Therefore, as I understand, in order to bring about this necessary, needful, and urgent legislation in behalf of health and life, the conferees waived that requirement and agreed upon the conference report as it has been brought in.

As one of the authors of the bill, I desire to thank the Senator from New York and all his colleagues on the conference committee, including the Senator from Arkansas [Mrs. CARAWAY], the Senator from Pennsylvania [Mr. GUFFEY], and other Senators who were conferees.

Mr. WALSH. Mr. President, the Senator from Connecticut [Mr. LONERGAN] is very much interested in this subject. Is the report of the conferees agreeable to him? The reason I make the inquiry is that the Senator from Connecticut is not present in the Chamber at the moment.

Mr. BARKLEY. The conference report does not satisfy the Senator from Connecticut, but he has been very generous in making concessions. He has been very cooperative, very much interested, and has lent wide experience and study and observation to the consideration of this subject. While he is somewhat disappointed that we could not go further in bringing about Federal enforcement, the Senator from Connecticut is so much interested in the principle involved of obtaining stream-pollution legislation, that, from my conferences with him, I am satisfied he will continue to work in cooperation with all of us who have been interested in this subject to secure further legislation dealing with this matter in the future, if and when it is found necessary, and I want to say that, so far as I am concerned, I shall be delighted to cooperate with him in the future as I have in the last 2 years, in trying to strengthen this measure in such respects as may be needed.

Mr. WALSH. In behalf of the Senator from Connecticut, I wish to say that I am glad to have heard the statement of the Senator from Kentucky.

Mr. BARKLEY. I want to compliment the Senator from Connecticut, who is not now on the floor of the Senate,

for the patience, forbearance, and cooperative effort which he has given, not only to the study of this subject, but to its final consummation.

Mr. COPELAND. Mr. President, I wish to say a word in reply to what the Senator from Massachusetts [Mr. WALSH] has said. The spirit of the Senator from Connecticut has been perfectly splendid. He was disappointed because we could not go further than we did. He was anxious to have Federal control. The conference was more limited than I hope any other conference I shall attend may be, because of the limitations and restrictions provided by the rules of the two Houses. In certain places where we wished to make modifications in the language we found we could not make them because we were tied by the rules of the two Houses. The Senator from Connecticut [Mr. LONERGAN] has been working to the end that an ideal condition with respect to streams and water supplies may prevail universally throughout the United States. He has been working on it for years. While he was disappointed that we could not go so far as we wished, he told me yesterday that if I would wait until noon today, if I did not hear from him, he would be satisfied to have the conference report presented. I am going to help him next year to make the measure a stronger one.

I will say that no matter what may happen to other Senators next fall, I do not have to worry, because I do not go before the voters for a couple of years.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

NAMING OF SUBCONTRACTORS ON PUBLIC BUILDING PROJECTS

Mr. KING. Mr. President, I move to reconsider the vote by which House bill 146 was passed yesterday, and ask that the House be requested to return the bill to the Senate.

The PRESIDING OFFICER. The question is on the motion of the Senator from Utah.

The motion was agreed to.

The PRESIDING OFFICER. The House will be requested to return the bill.

ONE-HUNDREDTH ANNIVERSARY OF THE BIRTH OF JOHN HAY

The PRESIDING OFFICER laid before the Senate a concurrent resolution (H. Con. Res. 53), which was read, as follows:

Whereas the one-hundredth anniversary of the birth of the late John Hay occurs on October 8, 1938; and

Whereas the said John Hay rendered distinguished public service as secretary and biographer of President Abraham Lincoln, as Secretary of State of the United States, as negotiator of the Hay-Pauncefote Treaty, and as orator at the joint meeting of Congress commemorating the life and character of President William McKinley; and

Whereas the Washington County (Ind.) Historical Society has planned an observance of said anniversary to be held at the birthplace of the late John Hay at Salem, Ind., during the week of October 2 to 18, 1938, inclusive: Therefore be it

Resolved, etc., That a committee of two Senators and four Representatives be appointed by the President of the Senate and the Speaker of the House of Representatives, respectively, to represent the Congress of the United States at said celebration.

That the Secretary of State, the Librarian of Congress, and the Archivist of the United States are hereby requested to furnish such documents or reproductions thereof, under such regulations as they may prescribe, to the Washington County Historical Society for exhibition purposes in connection with said celebration.

That no appropriation shall be made to carry out the purposes of this resolution.

Mr. MINTON. Mr. President, from October 2 to 8 of this year, at Salem, Ind., there will be celebrated the one-hundredth anniversary of the birth of John Hay. The concurrent resolution simply authorizes the President of the Senate to appoint two Senators, and the Speaker of the House of Representatives to appoint four Members of the House to attend officially the celebration at Salem, Ind. The concurrent resolution carries no appropriation at all.

I ask for the present consideration of the concurrent resolution.

There being no objection, the concurrent resolution (H. Con. Res. 53) was considered and agreed to.

The preamble was agreed to.

TEMPORARY NATIONAL ECONOMIC COMMITTEE

Mr. O'MAHONEY. Mr. President, I move that the Senate proceed to the consideration of Senate Joint Resolution 300, being Calendar No. 2103.

The PRESIDING OFFICER. The question is on the motion of the Senator from Wyoming.

Mr. VANDENBERG. Mr. President, would the Senator object to a quorum call before that is done?

Mr. O'MAHONEY. I was about to say that I fancy it would not be the purpose of the majority leader to proceed to the disposition of the joint resolution this afternoon.

Mr. BARKLEY. I should like to proceed for a while.

Mr. O'MAHONEY. Very well.

Mr. VANDENBERG. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk called the roll, and the following Senators answered to their names:

Adams	Dieterich	King	Pittman
Andrews	Donahey	La Follette	Pope
Ashurst	Duffy	Lee	Radcliffe
Austin	Ellender	Lewis	Reames
Bailey	Frazier	Lodge	Russell
Bankhead	George	Logan	Schwartz
Barkley	Gerry	Lonergan	Schwellenbach
Berry	Gibson	Lundeen	Sheppard
Bilbo	Glass	McAdoo	Shipstead
Bone	Green	McGill	Smith
Borah	Guffey	McKellar	Thomas, Utah
Brown, Mich.	Hale	McNary	Townsend
Brown, N. H.	Harrison	Maloney	Truman
Bulkley	Hatch	Miller	Tydings
Bulow	Hayden	Milton	Vandenberg
Burke	Herring	Minton	Van Nuys
Byrd	Hill	Murray	Wagner
Byrnes	Hitchcock	Neely	Walsh
Capper	Holt	Norris	Wheeler
Caraway	Hughes	O'Mahoney	
Connally	Johnson, Calif.	Overton	
Copeland	Johnson, Colo.	Pepper	

The PRESIDING OFFICER. Eighty-five Senators have answered to their names. A quorum is present. The question is on the motion of the Senator from Wyoming [Mr. O'MAHONEY].

The motion was agreed to; and the Senate proceeded to consider the joint resolution (S. J. Res. 300) to create a temporary National Economic Committee, which had been reported from the Committee on the Judiciary, with amendments.

The PRESIDING OFFICER. The first committee amendment will be stated.

The first amendment was, in section 1, page 2, line 2, after the word "Treasury", to strike out "Department of Labor" and insert "Department of Commerce", so as to read:

Resolved, etc., That there is hereby established a temporary National Economic Committee (hereinafter referred to as the "committee"), to be composed of (1) three Members of the Senate, to be appointed by the President of the Senate; (2) three Members of the House of Representatives, to be appointed by the Speaker of the House of Representatives; and (3) one representative from each of the following Departments and agencies, to be designated by the respective heads thereof: Department of Justice, Department of the Treasury, Department of Commerce, the Securities and Exchange Commission, and the Federal Trade Commission.

Mr. BARKLEY. Mr. President, instead of striking out "Department of Labor" and inserting "Department of Commerce", would the Senator from Wyoming have any objection to inserting "Department of Commerce" in addition to "Department of Labor"?

Mr. O'MAHONEY. The Judiciary Committee considered that proposal at great length. It was the opinion of the committee that the economic committee should not be enlarged in such form, because then there would be six Members from Congress and six members from the executive establishments. As the joint resolution has been reported, the committee consists of six Members of Congress—three from the Senate and three from the House—and five members from the executive establishments. It is the judgment of the Judiciary Committee that the change which the Senator suggests should not be made.

Mr. BARKLEY. I appreciate that fact. Otherwise the committee would not have amended the joint resolution in the way in which it did. I do not know to what extent the

committee considered the addition of the Department of Commerce to the Department of Labor. The reason why I make the inquiry and suggestion is that one of the objects of antitrust legislation, in addition to securing fair prices and the prosecution of those who are engaged in monopolies, is to have an indirect, if not a direct, influence on employment.

We happen to have information to the effect that, although the production of the steel industry has decreased from around 90 percent of capacity to approximately 30 percent, and the employment of men has declined proportionately, there has been no reduction in the price of steel products. While the production of steel has gone down and the employment of men in the steel industry has gone down, not only has there been no reduction in the price of steel but in some cases it has actually increased. That circumstance is directly related to the question of unemployment.

It seems to me that the Department which has as its object the consideration of questions of labor and unemployment has as much at stake in antitrust legislation as has the Department of Commerce; I should not say more, but as much.

Mr. O'MAHONEY. There can be no doubt as to the correctness of everything the Senator has stated. However, I think he is overlooking the provisions of the joint resolution.

On page 5, beginning in line 13, the Senator will find the following specific provision:

> The committee is authorized to utilize the services, information, facilities, and personnel of the Departments and agencies of the Government.

Under that language there can be no doubt that it would be within the power of the committee to utilize all the functions and all the personnel of the Department of Labor. I am sure the Senator will agree with me that a large committee may become unwieldy. I feel that the decision of the Judiciary Committee in limiting the membership to six Members of Congress and five members of the executive Departments should be sustained by the Senate.

Mr. BARKLEY. There is no doubt that the committee may utilize the agencies of the Department of Labor; but it may do the same as to all other Departments.

Mr. O'MAHONEY. That is correct. Therefore, in the interest of efficiency in the operation of the committee, I feel that the membership should stand as provided for in the joint resolution as reported by the Judiciary Committee.

Let me add that the joint resolution was considered by Chairman SUMNERS, of the Judiciary Committee of the House. I have discussed the joint resolution with representatives of the Department of Justice and representatives of the Securities and Exchange Commission, as well as of other executive Departments, and the measure is now generally satisfactory.

Mr. BARKLEY. This measure was introduced in the Senate by the Senator from Wyoming, and in the House by the chairman of the Judiciary Committee of the House, as identical joint resolutions.

Mr. O'MAHONEY. That is correct.

Mr. BARKLEY. After long consideration and deliberation, and much consultation with the executive Departments and among the members of the two Judiciary Committees, the joint resolution as introduced included the Department of Labor; and the Judiciary Committee of the Senate changed that provision so as to include the Department of Commerce instead of the Department of Labor.

Mr. O'MAHONEY. Representation was made to the committee on behalf of the Department of Commerce, particularly on behalf of the advisory committee of businessmen which has been cooperating with the Secretary of Commerce; and it was the judgment of the committee that, in the interest of promoting harmony and good feeling between Government and business, representatives of the Department of Commerce, instead of the Department of Labor, should be included in the joint resolution as a part of the committee.

Mr. BARKLEY. I do not see any fundamental objection to 12 members as compared to 11.

Mr. O'MAHONEY. Of course there is the normal objection to an even number instead of an odd number.

Mr. BARKLEY. If the Senator is going to assume that the two groups are to be antagonistic and that they will be pulling and hauling against each other, of course, he would be correct, and one side or the other should have a majority; but it is my understanding that the committee is to merge as a committee; that it is to be an integrated committee, and not simply to represent particular Departments from which the members are taken.

Mr. O'MAHONEY. The Senator is quite right.

Mr. BARKLEY. I do not think that there would be any danger of a division of six and six on the matter of procedure or as to the method of obtaining information and from what source. So it seems to me that minimizes the necessity of having a group that would be always in the majority, although it might not turn out that way. If there were controversies, it might turn out that Members of the House or Senate might side with some members from the executive Department. It is difficult to conceive that an impasse would be reached as between the six representing the Congress and the five representing the executive.

Mr. O'MAHONEY. I am interested in obtaining results.

Mr. BARKLEY. I realize that.

Mr. O'MAHONEY. And I feel that results can better be obtained by a small committee than by a large one. In the original resolution which was introduced the personnel of the committee was to be constituted of two Members of the Senate, two Members of the House, and the heads of three executive Departments, making a committee of seven. Now it has been increased by 4, making it a committee of 11, and the Senator is asking that it be increased again by 1, making it a committee of 12. I feel that the suggestion is not well made and that it should not be adopted.

Mr. BARKLEY. Will the Senator allow the amendment to go over until we have finished other committee amendments and then return to it?

Mr. O'MAHONEY. Certainly.

Mr. CONNALLY. Mr. President, may I suggest that, irrespective of whether the five Department heads would vote as a bloc, or the six representing the Senate and the House would so vote, the point about it is that there would be an odd number, and there would be a decision one way or the other, although they might break up and some vote one way and some vote the other. There would be an odd number, just as in the Interstate Commerce Commission and the Supreme Court and all bipartisan boards there is some way of obtaining a majority vote.

Mr. O'MAHONEY. Exactly; the Senator is quite right, but inasmuch as the Senator from Kentucky [Mr. BARKLEY] has requested that the amendment go over, of course, I have no objection to that being done.

Mr. LOGAN. Mr. President, will the Senator yield there?

Mr. O'MAHONEY. I yield.

Mr. LOGAN. I wish to ask the Senator if he has thought further about the suggestion which I have made from time to time and which I think would afford the only solution of the question, namely, that in adopting the resolution we provide for the appointment of three Members of the Senate and three Members of the House of Representatives, appropriate for them $100,000, and confer upon them all the powers that are contained in the resolution, and then add a section appropriating or authorizing the appropriation for the use of the President of $400,000, so that he could use such agencies of the Government as he might desire, they to make an investigation and also report to the Congress. Has the Senator considered that suggestion any further?

Mr. O'MAHONEY. Oh, Mr. President, I will say that I have considered that at length, and it seems to me to be an altogether unwise and unnecessary provision, because then we should have two investigations proceeding at the same

time. We might have witnesses chasing from the executive investigation over to the legislative investigation and witnesses from the legislative investigation chasing over to the executive and vice versa. The purpose of this resolution is to obtain—I was about to say a scientific investigation of what I conceive to be the most important question before the people of the United States, and I feel it should not be bogged down by unnecessary provisions of that kind.

Mr. LOGAN. I do not want it to bog down, but I have this idea also: I do not think, to be perfectly frank about it, that there is the slightest prospect of this integrated committee, as it has been called, ever accomplishing anything. It is impossible to mix the executive branch and the legislative branch of the Government and ever get anywhere. I can very readily see that we could create a committee of Members of the Congress and that they should sit as a court to hear and consider the evidence, and then provide that the executive branch of the Government should present the evidence to them; I can see how that could be done; but here is a resolution reaching over and picking out someone from one Department, someone from another Department, and so on. It will bring a lack of harmony and will result in disagreement. The two should be separated in some way, or else the congressional committee should sit and let the executive branch present evidence to them, to be weighed and considered by the congressional committee.

Mr. O'MAHONEY. The Senator made a very clear statement of that point of view in the Judiciary Committee. Of course, it is not the question before the Senate now, and I suggest that, as a matter of procedure, the Senator permit us to proceed with such amendments as may be agreed to, in order that we may perfect the resolution, and then, if the Senator from Kentucky desires to offer his alternative plan later on, there will be opportunity afforded.

Mr. BARKLEY. I suggest that the Senator ask unanimous consent that the committee amendments be first considered so that we may dispose of them.

Mr. O'MAHONEY. I thank the Senator for that suggestion.

Mr. LOGAN. Mr. President, before we get away from the point which has been discussed, it seems to me that after the committee amendments shall have been adopted perhaps the resolution should go over until tomorrow so that we may have time to give more thought to it. The Judiciary Committee is not at all in agreement about it. There were many different opinions in the committee, although the report was made by a majority vote, it is true.

It seems to me that, after the resolution is perfected by the adoption of such amendments as the Senate desires, at least, the resolution should go over until tomorrow, so that some of us who are interested in the matter may try to work out something whereby we may bring about an agreement.

Mr. O'MAHONEY. I have no objection to that, and, as a matter of fact, I did not believe that the resolution would be considered this evening at all. The majority leader, however, was anxious to dispose of it.

Mr. LOGAN. I am glad to cooperate with the Senator from Wyoming, because I know how interested he is.

Mr. O'MAHONEY. Mr. President, I ask unanimous consent that the joint resolution be read for amendment and that committee amendments be first considered.

The PRESIDING OFFICER (Mr. HATCH in the chair). Is there objection to the request of the Senator from Wyoming? The Chair hears none, and the order is made.

The Chair will suggest that the first amendment has been stated.

Mr. NORRIS. Mr. President, I will say to the Senator from Wyoming that I should like to discuss the joint resolution generally before the committee amendments are considered. Unless opportunity is given me to do that, I will avail myself of the opportunity afforded by the first amendment to discuss it. However, I thought, perhaps, the Senator from Wyoming was going to discuss the resolution generally, and, if he desires to do that, I concede that he should precede me.

Mr. O'MAHONEY. I had no intention of discussing the joint resolution generally at this time, because I was hopeful we could dispose of it expeditiously; but if the Senator from Nebraska desires to make a statement, I am glad to yield the floor to him.

Mr. NORRIS. Very well, that will suit me if it is agreeable to the Senator.

Mr. O'MAHONEY. It is perfectly agreeable to me.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. NORRIS. Mr. President, this resolution has to do with a subject in which we are all greatly interested. It offers the possibility of doing a great deal of good, I think, with respect to a subject the investigation of which has been, in my opinion, much neglected by the Congress.

The general investigation that is proposed by the joint resolution comes, I presume, in response to the message of the President calling attention to conditions and asking for some kind of an investigation. With all due respect to my colleagues on the committee, and to the Senator from Wyoming, who is one of the coauthors of the resolution, I think a mistake has already been made to which attention has been briefly called by the Senator from Kentucky.

This resolution provides for a committee to be composed of three Members of the Senate, three Members of the House of Representatives, and five members representing the different Departments named in the joint resolution, making, as I see it, a sort of a three-headed committee. I do not believe, Mr. President, that much good will be accomplished by a three-headed investigation of that kind. There is opportunity to do a great deal of good, and probably a great deal of good will be accomplished, but the investigation will be long drawn out. As the committee will be made up of three different elements, naturally they will be led into different directions and there will be opportunity for discussion and debate and consideration, all of it, of course, perfectly honest, but without any possibility of reaching much, if any, agreement on anything. It would be preferable, it seems to me, if we are going to confine it to an investigation by the Congress, to have the investigation conducted by a Senate committee or a House committee acting alone, with a relatively small number of men on the committee. They would have the active support, of course, of the heads of the Departments furnishing them evidence. However, we have passed beyond that, for we are going to have at least a two-headed committee composed of three Senators and three Representatives. That much we are bound to have. I presume the rest of it is water over the dam and there is no use considering it.

If we wanted an investigation by Members of Congress, there is no reason why we should not have such an investigation and not consider the heads of the Departments at all. Such a committee would be assisted, of course, by the heads of the Departments, although no Departments would be represented on the committee. A legislative committee would be responsible for the results, whatever they might be, good or bad. While an investigation made by heads of the Departments, under the supervision of the President, would be another way to make a good investigation; and if the money to make such an investigation and the power to make it were given to the President, he would be responsible. We would have a better investigation either if made alone by the heads of Departments, such as the President would select, or by a legislative committee, leaving the heads of the Departments out of it entirely. The resolution tries to combine the three. Instead of having the President select the members of the committee directly, the selection of the committee on the part of the Departments must be made from designated Departments. I presume the selections will be made by the President in every case, if the joint resolution passes, but he will be confined to those Departments.

I do not think we ought to confine the President to those Departments. Probably he would make selections from them

anyway; but if we are going to have the President designate some of them, let us give him a free hand, and let him designate whom he wants to designate. Let him be responsible for what he does. At present we draw the line, and say, "You may have one from this Department, one from that Department, and one from another Department"; and, as the joint resolution was introduced, there was to be one from the Department of Labor. The Senator from Wyoming [Mr. O'MAHONEY] says he had the matter up with the Department of Commerce and with some businessmen who were assisting the Department of Commerce, and they wanted to put in a representative from the Department of Commerce; so they took out the Department of Labor and put in the Department of Commerce. The Senator did not say that he had discussed the matter with the Department of Labor and that they had agreed to that course. They were not consulted; but the Department of Commerce wanted to be put in, and some businessmen wanted that Department in, so it was put in, and the Department of Labor was taken out.

Personally, I think that was a sad mistake, because if there is one Department of the Government which ought to be represented on an investigation of this kind, unless we except the Department of Justice, it seems to me the Department of Labor is more important than any of the others. But, if we are going to designate people from the different Departments, I have no objection to putting in the Department of Justice. The only objection to putting them both in is, we are told, that it will make too large a committee and will tie the committee. I think, as a practical proposition, it will never occur on this committee that there will be a tie vote. It would not be anything very bad if there were a tie vote; but I concede that I would rather have an odd number than an even number.

There is another provision in the joint resolution which to my mind is the most detrimental of any provision in it. On the last page of the jont resolution, subsection (b) of section 6 reads as follows:

Of the funds authorized to be appropriated under subsection (a), not to exceed $100,000 shall be immediately available for expenditure by the committee in carrying out its functions.

So far, I have no fault to find with that; but you will notice as we proceed that this is to be done by the committee. The President cannot do it. The President, who sent the message which brought about the investigation, cannot do it. The committee is going to do it, and the $100,000 is for the use of the committee. It is supposed that $100,000 will be enough. If it will not be enough, I should be in favor of increasing it. If the committee find that they need more money, I should be in favor of giving them more money. Let the committee proceed without hindrance and without limit.

Then this joint resolution says:

And not to exceed $400,000 shall be available—

If we agree to the amendments—

on application by the committee—

The money will never be available unless the committee applies for it—

for allocation by the President.

Is it not perfectly plain that not a cent of money will ever be allocated, or given to the President for allocation, unless the committee first makes application for it and gets the money? There is no other way in which to get it.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

The PRESIDING OFFICER. Does the Senator from Nebraska yield to the Senator from Wyoming?

Mr. NORRIS. Yes; I yield.

Mr. O'MAHONEY. The Senator, of course, is aware that the Judiciary Committee, in considering the original form of the joint resolution, struck out entirely subparagraph (b) on page 7.

Mr. NORRIS. Yes; I am aware of that.

Mr. O'MAHONEY. So that the form in which the joint resolution comes before the Senate now is a compromise in the division of the appropriation, which otherwise would have been $500,000 for the committee and none for the President.

Mr. NORRIS. That is true. I am going to come to that. I do not think that makes a particle of difference. We have the joint resolution here in this form.

If I had my way—and it seems to me it would be the right way to do—if I were going to give any money to the President to allocate among the Departments, I would give him the money and not have any strings tied to it. I cannot conceive that the President of the United States, at whose instigation this whole investigation arose, should come hat in hand to the committee and say, "Gentlemen, will you not give me some money to allocate among the Departments to make this investigation?" That is what this joint resolution, as amended by the Judiciary Committee, means. I think it is a direct slap in the face of the President of the United States. I cannot conceive of Congress passing a law which would say, "Here, Mr. President, is a committee appointed with $400,000 to make the investigation of monopoly that you have been talking about. If you want any money, go to the committee, make your showing, and get it."

If we are going to confine the investigation to Members of Congress, all well and good; let us say nothing about the President. If we are going to give the President any hand in it, let us not make him come as a supplicant to a committee of Congress and ask them to let him have a little of the money. They may give him $400,000, or they may give him what they want to give him. They may question him and say, "What are you going to do with the money? How are you going to use it? How much are you going to need? We will give you $50 today, and when you use that come back, and perhaps we will give you some more if you can make a good showing as to what you did with the $50." That is the way Congress is going to treat the President of the United States if we pass the joint resolution in this amended form.

If I were President of the United States, I should not take 5 minutes to veto the joint resolution if it came to me in that form. It does not make any difference whether we agree with the President, or belong to his party, or anything of the kind; he is your President and he is my President, and it seems to me the great office which he holds ought to command more respect from Congress, at least, than the joint resolution manifests:

Four hundred thousand dollars shall be available, on application by the committee for allocation by the President among the Departments and agencies of the Government to enable them to carry out their functions under this joint resolution.

We ought to say, in fact we ought to do what this particular subsection did as the Senator from Wyoming originally drew and introduced it. It would be free from that objection if it were passed in that form.

I am not finding fault with the Senator from Wyoming. The provision was once defeated, and the whole thing struck out, because it gave to the President the right to handle the $400,000. In order to get something, the Senator from Wyoming offered this amendment, and it was agreed to by a majority of the Judiciary Committee as a compromise. So I am not finding fault with anybody. The committee have a right to do this if they want to; but I should never be a party to such a provision, no matter who was President of the United States. If I were afraid of him, if I thought he was a crook, or if I thought he was dishonest, or if I thought he would not make a fair investigation, I should prevent, if I could, giving any money to him; but I should not subject him to the humiliation of going to a committee and begging for money to carry out the functions delegated to him by the joint resolution.

Mr. President, with those two amendments I do not see any objection to the joint resolution, although I think it is a mistake to investigate in the way that we undertake to do by the joint resolution. I think it would be much better if we should make the investigation in the other ways I have indicated. But we should at least say to the President of the United States, "Here is something for you and your

Departments to do; here is a sum of money that we appropriate; use it as you see fit," and hold him responsible for its use, instead of saying, "Mr. President, here is $400,000 which you may get if you will make the right kind of a showing before a committee that we appoint." That looks to me like taking a step which we cannot take unless we are willing to say that we have no faith in the President; and if we are willing to say that, then we ought not to give him any money at all.

Mr. President, if this one amendment of the committee should be agreed to I could not under any circumstances support the joint resolution, and much as I desire to have this investigation take place, I would vote against it, even though it killed the joint resolution. I think the President would be justified, in an effort to maintain the dignity of his own office, in vetoing the joint resolution if we should pass it in its present form, and I hope he will do so if it is passed in that form.

Mr. O'MAHONEY. Mr. President, I am glad the Senator from Nebraska, in his remarks which have just been concluded, called attention to the fact that in the committee, as the sponsor of the original joint resolution, I resisted the amendment by which all of paragraph (b) of section 6 was stricken out, and that the measure in its present form, as reported by the committee, is the result of a compromise effort to accommodate the conflicting views of two factions within the committee.

One group wanted to make the entire appropriation to the committee, without any participation whatsoever by the executive agency. Another group, of which I was one, wanted the $400,000 to be subject to distribution by the President among the executive agencies.

I may say that the joint resolution in the form in which it was introduced was the result of collaboration between representatives of the President, selected by him, the chairman of the Committee on the Judiciary of the House of Representatives, and myself, and so far as I am personally concerned, I still believe that paragraph (b) as originally introduced is in the form in which it ought to be adopted; but I am now the spokesman for the Judiciary Committee, representing the joint resolution as it was reported, and when that amendment comes before the Senate for action I think the Senate will probably be able to reach a conclusion upon the matter. I wanted to set the record straight.

Mr. McGILL. Mr. President, will the Senator yield?

Mr. O'MAHONEY. I yield.

Mr. McGILL. Would it not meet at least some of the objections offered by the Senator from Nebraska, and at the same time accomplish the purpose of the committee, if on page 7, line 10, paragraph (b), we should strike out the words "on application by the committee," so as to leave the $400,000 in the control of the President, to be allocated by the President without any action by the committee?

Mr. O'MAHONEY. I call the attention of the Senator to the fact that all that would be necessary, if that is what the Senator desires to have accomplished, would be to reject the committee amendment, and it would then stand as it was originally introduced.

I now call for the regular order.

The PRESIDING OFFICER. The regular order is action on the first amendment of the committee.

Mr. O'MAHONEY. The first amendment of the committee was passed over at the request of the majority leader.

The PRESIDING OFFICER. Nothing has been passed over as yet.

Mr. BARKLEY. Mr. President, I made the request a while ago, and I understood it to be granted, that the first amendment be passed over temporarily.

The PRESIDING OFFICER. The first committee amendment is passed over temporarily, and the clerk will report the next amendment of the committee.

The LEGISLATIVE CLERK. On page 2, line 9, after the word "resolution" and the period, it is proposed to insert, "Any member appointed under clauses (1) and (2) may, when unable to attend a meeting of the committee, authorize another such member to act and vote for him in his absence," so as to read:

Any such alternate, while so acting, shall have the same rights, powers, and duties as are conferred and imposed upon a member of the committee by this joint resolution. Any member appointed under clauses (1) and (2) may, when unable to attend a meeting of the committee, authorize another such member to act and vote for him in his absence. A vacancy in the committee shall not affect the power of the remaining members to execute the functions of the committee and shall be filled in the same manner as the original selection.

The amendment was agreed to.

The next amendment of the committee was, on page 3, after line 10, to strike out the following:

SEC. 3. (a) The committee shall have power to appoint subcommittees to assist the committee in its work. In addition to such subcommittees as the committee may appoint, there is established a standing subcommittee composed of the five representatives of the executive departments and agencies designated as members of the committee by this resolution.

(b) Subject to the direction of the committee it shall be the duty of the standing subcommittee to cause a full and complete study and investigation to be made of the subject matter of the committee's inquiry. Each Department and agency represented on the standing subcommittee shall undertake such portion of such study and investigation as the standing subcommittee may assign to it, and in making such assignment the standing subcommittee shall, so far as possible, assign to each such Department or agency that portion of the inquiry which is within the jurisdiction of such Department or agency under existing law. Subject to the direction of the committee, it shall be the duty of the standing subcommittee, through the Departments and agencies represented thereon, to arrange for the orderly presentation of evidence by the examination of witnesses and by the introduction of documents and reports before the committee or the standing subcommittee or a person duly designated by the committee or standing subcommittee for such purpose.

And to insert:

SEC. 3. (a) The committee shall have power to appoint subcommittees to assist the committee in its work. The members of the committee shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the exercise of the functions vested in the committee.

(b) The Department of Justice, Department of the Treasury, Department of Commerce, the Securities and Exchange Commission, and the Federal Trade Commission are directed to appear before the committee or its designee and present evidence by examination of witnesses or the introduction of documents and reports. The evidence presented by each of these agencies shall cover the subject matter of this inquiry which is within its administrative jurisdiction under existing law or which may be assigned to such agencies by the committee. Each such agency is authorized to request the committee to issue such subpenas as such agency may require for the attendance of witnesses and the production of documents and reports.

(c) The funds appropriated under the authorization contained in this joint resolution shall, with the approval of the committee, be available for expenditure by the committee and by such Departments and agencies as the committee may designate to cooperate with the committee in carrying out the provisions of this joint resolution.

So as to read:

SEC. 2. It shall be the duty of the committee—

(a) To make a full and complete study and investigation with respect to the matters referred to in the President's message of April 29, 1938, on monopoly and the concentration of economic power in and financial control over production and distribution of goods and services and to hear and receive evidence thereon, with a view to determining, but without limitation (1) the causes of such concentration and control and their effect upon competition; (2) the effect of the existing price system and the price policies of industry upon the general level of trade, upon employment, upon long-term profits, and upon consumption; and (3) the effect of existing tax, patent, and other Government policies upon competition, price levels, unemployment, profits, and consumption; and

(b) To make recommendation to Congress with respect to legislation upon the foregoing subjects, including the improvement of antitrust policy and procedure and the establishment of national standards for corporations engaged in commerce among the States and with foreign nations.

SEC. 3. (a) The committee shall have power to appoint subcommittees to assist the committee in its work. The members of the committee shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in the exercise of the functions vested in the committee.

(b) The Department of Justice, Department of the Treasury, Department of Commerce, the Securities and Exchange Commission, and the Federal Trade Commission are directed to appear before the committee or its designee and present evidence by

examination of witnesses or the introduction of documents and reports. The evidence presented by each of these agencies shall cover the subject matter of this inquiry which is within its administrative jurisdiction under existing law or which may be assigned to such agencies by the committee. Each such agency is authorized to request the committee to issue such subpenas as such agency may require for the attendance of witnesses and the production of documents and reports.

(c) The funds appropriated under the authorization contained in this joint resolution shall, with the approval of the committee, be available for expenditure by the committee and by such Departments and agencies as the committee may designate to cooperate with the committee in carrying out the provisions of this joint resolution.

Mr. O'MAHONEY. Mr. President, at the conclusion of the consideration of the joint resolution in the committee a few days ago the legislative counsel called my attention to the fact that there is an apparent conflict between paragraph (c) on page 5 and paragraph (b) on page 7, as approved. I, therefore, ask leave to perfect the committee amendment on page 5 by dropping paragraph (c).

Mr. BARKLEY. Mr. President, I should like to make an inquiry. Does the language in paragraph (a), "The committee shall have power to appoint subcommittees to assist the committee in its work," contemplate the idea of subcommittees within the committee?

Mr. O'MAHONEY. Within the committee; yes.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming that he may modify the amendment?

The Chair hears none, and the amendment is modified accordingly. The question is on agreeing to the amendment, as modified.

The amendment, as modified, was agreed to.

The PRESIDING OFFICER. The Clerk will state the next amendment of the committee.

The LEGISLATIVE CLERK. On page 5, line 21, after the words "and by", it is proposed to strike out "the standing subcommittee and"; on page 6, line 6, after the words "the committee", strike out "or the standing subcommittee", and on line 9, before the word "majority", to strike out "a", and after the word "vote", to strike out "of the members present at any meeting", so as to read:

(d) The committee shall have power to employ and fix the compensation of such officers, experts, and employees as it deems necessary for the performance of its duties. The committee is authorized to utilize the services, information, facilities, and personnel of the Departments and agencies of the Government.

SEC. 4. (a) Prior to the opening of the first session of the Seventy-sixth Congress or as soon thereafter as is practicable the committee shall transmit to the President and to the Congress preliminary reports of the studies and investigations carried on by it, and by the Departments and agencies represented thereon, together with the findings and recommendations of the committee, and shall submit to the President and to the Congress as soon as practicable thereafter, during or prior to the termination of the Seventy-sixth Congress, further and final reports of the studies and investigations carried out pursuant to this resolution, together with the findings and recommendations of the committee.

(b) A majority of the committee shall constitute a quorum, and the powers conferred upon them by this joint resolution may be exercised by a majority vote.

(c) All authority conferred by this joint resolution shall terminate upon the expiration of the Seventy-sixth Congress.

The amendments were agreed to.

Mr. O'MAHONEY. Mr. President, I call attention to the amendment in line 11, page 5. Paragraph (c) having been stricken out, the designation "(c)" instead of "(d)" should remain on line 11, so the proposed amendment should be rejected.

The amendment was rejected.

The PRESIDING OFFICER. The clerk will state the next amendment of the committee.

The LEGISLATIVE CLERK. In section 5, page 6, line 13, after the word "committee", it is proposed to strike out "the standing subcommittee"; and on line 24, after the word "committee", to strike out "or the standing subcommittee", so as to make the section read:

SEC. 5. For the purpose of this joint resolution, the committee and the courts of the United States shall be entitled to exercise the same jurisdiction, powers, and rights as are conferred upon the Securities and Exchange Commission and upon such courts with respect to studies and investigations conducted pursuant to the Act of August 26, 1935 (title I, ch. 687; 49 Stat. 803), and the provisions of subsections (d) and (e) of section 18 thereof (49 Stat. 831) shall be applicable to all persons summoned by subpena or otherwise to attend and testify or to produce books, papers, correspondence, memoranda, contracts, agreements, or other records and documents, before the committee.

The amendment was agreed to.

The PRESIDING OFFICER. The clerk will state the next amendment of the committee.

The LEGISLATIVE CLERK. On page 7, after the word "available", in line 9, it is proposed to insert "on application by the committee for allocation", so as to read:

SEC. 6. (a) There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the sum of $500,000, or so much thereof as may be necessary, to carry out the provisions of this joint resolution.

(b) Of the funds authorized to be appropriated under subsection (a), not to exceed $100,000 shall be immediately available for expenditure by the committee in carrying out its functions and not to exceed $400,000 shall be available, on application by the committee for allocation, etc.

Mr. BARKLEY. Mr. President, I hope this amendment of the committee will be rejected. I agree entirely with what the Senator from Nebraska has said about the matter, and I have conferred with the Senator from Wyoming and others about the amendment. I appreciate very much the sincerity of the Senator from Wyoming in his statement that, so far as he is concerned, he prefers the language as it was offered by him before the amendment of the Committee on the Judiciary was made.

I think it is extremely important that the President be left a free hand in the distribution or allocation of the $400,000 among the various executive departments. It seems to me unreasonable to expect the President to take a tin cup and go around like a blind man begging for a little change, in order that he may authorize the executive departments to do what he and we desire to have done, namely, gather information, and make investigations and research, in order that the information may be brought to the full committee.

So far as the members who will be on the committee are concerned, I imagine they will have some supervision over the information and the research to be made by the Department which they represent. They will be serving in a dual capacity. They will be members of the committee, and as members of the committee will have a share in determining the expenditure of the $100,000 which is to be available to the committee.

I do not know who will be on the committee as a representative of the Department of Justice, for instance, but let us assume that Mr. Arnold, who is the head of the anti-trust division—and it would be logical for him to be a member of the full committee—should be on the committee. Undoubtedly he would supervise the expenditure of whatever money may be allocated to the Department of Justice out of the $400,000.

We do not know whether or not the full committee will be in session all the time during the recess of Congress. We are planning to adjourn in a few days, and we will not be back until January, in all probability. Whether the full committee will be in session and at work all during the recess of Congress, nearly 6 months, I do not know. Very likely they will not be in session all the time, because the Members of the House and Senate have their own situations to attend to, which may preclude the possibility of their being in session all during the recess; but the executive departments ought to be busy all the time between now and January getting up this information.

The President should not be obliged to ask that the chairman of the committee call the committee together when Congress is not in regular session in order that he may ask for a little money to allocate to the Department of Commerce, the Department of Justice, the Securities and Exchange Commission, the Federal Trade Commission, and other departments which he may wish to enlist in the inves-

tigation in order that we may legislate when we come back for the next session of Congress.

Mr. LEWIS. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. LEWIS. Is it intimated that the money to be given to the President of the United States to carry out the purposes of the joint resolution is to be expended only after he shall have conferred with the members of the committee and they shall agree with his object, and they are to apportion the money when, according to their judgment, it shall be needed, in order at once to carry out the objects of the joint resolution?

Mr. BARKLEY. Precisely.

Mr. LEWIS. In other words, why give the President any money at all, if he is not to have any part or ought not to have any part in deciding how it is to be expended?

Mr. BARKLEY. The Senator will observe the language of the amendment which has been placed in the measure by the Committee on the Judiciary, which entirely changes the measure as it was when introduced by the Senator from Wyoming in the Senate and by the chairman of the Judiciary Committee in the House, the gentleman from Texas [Mr. SUMNERS]. After the representatives of the Departments had conferred with the members of the Senate and House committees and with the President of the United States, the joint resolution was introduced in its original form. After the language—

Four hundred thousand dollars shall be available—

the Committee on the Judiciary now adds the following language:

on application by the committee for allocation by—

And then follows the original language of the joint resolution—

the President among the Departments and agencies.

So the President will not be empowered to allocate one thin dime to any Department in the Government except upon the application of the committee set up in the joint resolution.

Mr. LEWIS. Let me ask a question. Suppose the Senate is in recess, and the respective members of the committee may for their welfare, political or personal, be at home. Some may have matters of a family nature which call them away from Washington. Some may be called home on holidays. The members of the committee, therefore, have been distributed very generously over the country. How could the President meet emergencies which may arise?

Mr. BARKLEY. He could not meet them until the committee should meet and adopt a resolution and take steps to authorize the President to allocate money to some Department. In other words, the President, in some way, will have to get the committee together. Then he will have to ask the committee to allow him to make allocations among the different Departments, and the committee will then have to authorize him to allocate the money among the different Departments before the money may be used for the purpose.

Mr. LEWIS. But before the committee can be summoned and the money put into use for the investigations with respect to certain matters of which the President may have knowledge, the evidence sought may be dissipated, and the opportunity to gain the information with respect to the needs of different Departments involved may have vanished.

Mr. BARKLEY. Probably.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. BURKE. It seems to me that the majority leader and others who have expressed themselves on this point have shown their total misconception of what the Judiciary Committee had in view, and since no one appears to be stating that position, I think it should be stated.

It is not the idea in setting up the committee composed of six representatives of the legislative body and five from the executive departments that the committee shall do nothing; that each of the three Senators and three Members of the House shall immediately go to distant parts of the country without doing anything at all. If that were the purpose of the joint resolution, it should be voted down altogether.

Of course what would happen, if the joint resolution should be adopted, would be that the committee would meet before its members leave Washington. The committee would outline its work; it would confer with the members of the executive departments who are on the committee, who would indicate what they need in the way of funds to carry on the work of the Departments, and then the President would make his request to the committee for so much for the Department of Justice, and so on.

According to our understanding the entire amount, or so much of it as is necessary, will be allocated at once to the various Departments.

The only purpose of the change in the joint resolution was to make the investigation in a sense a legislative investigation rather than a wholly executive investigation.

I see no merit whatever in the point which is being raised, that the President must come on bended knee and ask the committee for $10,000, or, as someone has suggested, $50. Of course the whole work of the committee will be outlined before its members leave Washington. It will be determined how much each of the Departments should have. The request will be made, and the committee will approve it. It seems to me to be a very sensible provision.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield.

Mr. O'MAHONEY. I rose in order to explain that very point. The argument which is being made by the majority leader, the argument which was made by the Senator from Nebraska, and that which was just now intimated by our very distinguished and eloquent friend, the senior Senator from Illinois, is all directed to an amendment which was voted down in the committee. The amendment was offered in the committee that the $400,000 should be available on application to the committee by the President. The Judiciary Committee almost unanimously, with only one vote in the negative, rejected that amendment. If that amendment had been adopted, then it would have been possible to have argued that the Judiciary Committee had brought before the Senate a joint resolution which was making the President subservient to the committee. But that, I must say in justice to the members of the committee, was not at all their purpose, and I think it was not the effect of the language which they adopted.

Mr. BARKLEY. Then, as I understand the language, in its present form, the President cannot even request the committee to allocate any funds.

Mr. O'MAHONEY. I am merely trying to explain to the Senator and to the Senate the different situations which arose within the committee. As the report was made it was the conception of the committee, as the junior Senator from Nebraska has just now stated, that it would be a working committee, a working committee with respect to all its members, whether they were from the executive or from the legislative branches, and that the committee would begin to work immediately. It was thought that immediately upon its appointment it would meet and adopt an agenda and distribute the funds.

Mr. BARKLEY. I appreciate that. Of course, in anything I have said I have not assumed that the committee would not take its duties seriously, and would not work diligently in the performance of its duties. I do not know what Members of the Senate will be on the committee, or what Members of the House will be on the committee, or who from the Departments will be on it, but if the President can make allocations of this $400,000 only when requested by the committee, I do not see why the President is brought into it at all.

Mr. O'MAHONEY. Will the Senator allow me to interrupt him?

Mr. BARKLEY. Yes.

Mr. O'MAHONEY. There is no doubt that under the language with respect to the allocation of the $400,000 the

initiative would have to come from the committee. There is no question about that.

Mr. BARKLEY. Yes. If the committee is to make the requests for the allowances, and if the President can allot any amount to the executive departments without the request being made by the committee, it seems to me it would be a mere pro forma performance of a perfunctory duty on the part of the President simply to carry out a request of the committee.

We should also keep in mind that when the President sent his message to the Congress on that subject, he asked that $500,000 be made available to be distributed and allocated by him to the various Departments for the purpose of making the investigation. That has been modified by giving the committee $100,000, and I think that is proper. I am for that provision. I think the committee ought to have money available for its own expenditures, but I insist that the other $400,000 should be left in the hands of the President without restriction.

Mr. NORRIS. Mr. President, much has been said by my colleague and others about the idea being expressed in the Judiciary Committee that the committee would meet and allocate all this money among the Departments. I do not believe that was the idea. But suppose it was. There is language in the measure which does not mean that. It does not say that. No matter what the Judiciary Committee might have been thinking, the measure contains the language of the committee which will allocate not to exceed a certain amount. They can allocate 50 cents if they want to for a certain Department and $100 for another, and the next week they may allocate some more. The probabilities are they will not allocate all of it at once. It is impossible to tell just how much each Department would use.

Mr. BARKLEY. The probabilities are they will not allocate the whole amount at once.

Mr. NORRIS. No.

Mr. BARKLEY. Until the investigation gets under way no one can know how much any Department will need.

Mr. NORRIS. As the Senator from Illinois has said, when the committee has gone home, and a meeting of the committee cannot be had, if it is then found that the money allocated to a certain Department has been exhausted, and that Department needs some more money, the committee will have to be called together before any greater allocation can be made. In other words, such action will have to await the assembling of the committee.

Mr. BARKLEY. I imagine the committee will engage in open public hearings, but I also imagine that in addition, and propably preparatory to those hearings, it will inaugurate research and investigation, not only by the Departments named in the joint resolution, but by all the Departments, and while those researches and investigations are going on the committee itself may take a recess. That is entirely possible. That happens in connection with all committees.

If the Senator from Nebraska is correct, and it is contemplated that the $400,000 will be allocated at once to the various Departments, I do not know how that could be done in a practical way, because no one can know in advance which Department will be called on or ought to be called on for service. If the committee meets in the beginning and allocates all the money to three, or four, or five, or six Departments, it may turn out later that there are three or four other Departments which ought to be brought into the picture, and investigations made by them. So my feeling is that from time to time, as the committee's work is in progress, allocations should be made to the Departments and agencies, as the need may exist, and may be revealed from time to time, and that that is a discretion which should be left in the President, and he ought not to be powerless to make the allocations unless the committee should see fit to ask him to make them.

Mr. BURKE. Mr. President, will the Senator yield?

Mr. BARKLEY. I yield to the Senator.

Mr. BURKE. It would seem to me very much better practice, if the evidence were available, for the Senate to allocate $100,000 to the committee, the committee having decided that that is what it needs, $100,000 or $150,000 to the Department of Justice, and so many thousands to each of the other Departments to carry on their work. But, as the Senator from Kentucky has said, it is not possible at this moment, while we are acting on the joint resolution, to say just how many thousand dollars the Department of Justice really needs, or how much the Securities and Exchange Commission needs.

Under the provisions of the joint resolution, it is entirely possible for the committee, as soon as it is set up, to meet. The heads of the various governmental agencies will confer. Mr. Arnold, if he is the representative of the Department of Justice, may bring before the committee his statement as to whether his Department will need $50,000 or $100,000 to get under way; and so with the other Departments. The allocation may be made immediately, although possibly not in the entire amount. We hope the committee would not allocate to any Department more than it could actually use. Then the Departments could go to work.

The proposed committee is supposed to report very early in the next session. The members, who are appointed on the committee, certainly ought to contemplate sitting down in Washington and going at the task if they are to be ready to bring in a report early in January. I see no difficulty at all. If $100,000, say, were allocated within the next few weeks to the Department of Justice, and in September that fund were exhausted, and the Department of Justice needed $50,000 more, and the $400,000 had not been fully allocated, does anyone think there would be any difficulty in having the committee say to the President, "Here is $50,000 more to turn over to the Department of Justice to go through with the matter"?

Mr. BARKLEY. I agree with part of what the Senator says, but I must disagree in part.

Mr. BURKE. I am complimented if the Senator agrees with any part of my statement.

Mr. BARKLEY. It is always a pleasure for me to agree with the Senator if I can, because I have a very high regard for his sincerity, his honesty, and his ability. It always causes me regret when I disagree with him. I have to do it oftener than I like.

I wish to say that I do not yet understand, from any explanation which has been made, why the committee felt itself called upon to deny the President the right to allocate the money. The President is in closer touch with the Departments than Congress could possibly be. The President is in closer touch with the Departments than the proposed committee would be, or could be, because he is the head of the executive branch of the Government, and deals with them all the time, day by day.

I do not in any way intimate that the proposed committee would not diligently go about the service which it might be called upon to render; and I do not in any way intimate that the committee would not measure up to the full responsibility of the great work which lies ahead of it. It may be a great work for the benefit of the American people. No subject is more vital, more imminent, more necessary, or indispensable than the investigation contemplated by the joint resolution. While the committee will be busy and diligent, as I stated awhile ago, it is not expected that it will be in continuous session from the time we adjourn until the next session of Congress.

I am not satisfied with any reason which has yet been advanced why the President should be denied the control of the funds. I think he is in a better position than any committee, such as is proposed, to allocate them promptly and judiciously on his own knowledge and information, and on the information which he will receive from the various Departments as to the part they will play in this activity.

Therefore, I hope the amendment will be rejected.

The PRESIDING OFFICER (Mr. HATCH in the chair). The Chair will endeavor to clear up the parliamentary situation, in which he thinks the Senator from Vermont is interested. The Chair asks the attention of the Senator from Wyoming.

Before the previous amendment was agreed to, as the Chair understood, the Senator from Wyoming requested that all of subparagraph (c) of section 3, on page 5, be eliminated.

Mr. O'MAHONEY. I made a formal motion to that effect.

The PRESIDING OFFICER. The Chair announced that the amendment to the amendment was agreed to without objection.

Mr. O'MAHONEY. That is my understanding.

The PRESIDING OFFICER. The amendment to the amendment eliminated all of subparagraph (c) of section 3, on page 5. Then the committee amendment as amended, was agreed to. That point seemed to be bothering the Senator from Vermont. Is it clear at this time?

Mr. AUSTIN. Mr. President, it is clear as mud.

The PRESIDING OFFICER. The Chair has made the parliamentary situation as clear as he can.

Mr. AUSTIN. I accept the statement of the Chair. Of course it is so. It must be so. I made the claim that the clerk was stopped in his reading at line 4 on page 5. I was informed that the clerk had read all of that paragraph, and then I announced that I had not heard it, though I sat here listening intently.

Mr. BARKLEY. Mr. President, if the Senator will yield——

Mr. AUSTIN. I will not yield at this moment, Mr. President. I should like to finish my statement.

The PRESIDING OFFICER. The Senator declines to yield.

Mr. AUSTIN. This is another matter with respect to which we are taken by surprise. We have done something else entirely in the face of what the Judiciary Committee agreed to. That accounts for my misunderstanding of the motion of the Senator from Wyoming [Mr. O'MAHONEY]. I supposed that the question on agreeing to the committee amendment was being put, and that we were acting upon the committee amendment. Had I understood that anything else was being done, I should have interposed an objection.

Mr. O'MAHONEY. Mr. President, will the Senator yield?

Mr. AUSTIN. I yield.

Mr. O'MAHONEY. I ask unanimous consent that the action of the Senate upon the committee amendment on page 4 be reconsidered in order that the Senator from Vermont may have an opportunity to express his views.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Wyoming? The Chair hears none; and the previous action, by which the amendment was agreed to——

Mr. NORRIS. Mr. President, what is the request?

The PRESIDING OFFICER. As the Chair understood it, the request of the Senator from Wyoming was that the action of the Senate in agreeing to his amendment to the committee amendment be reconsidered, and that the vote by which the committee amendment, as amended, was agreed to, be reconsidered, and that the Senate begin anew with the committee amendment on page 4. Is that the request of the Senator?

Mr. O'MAHONEY. The Chair has correctly stated the situation. If the Senator from Vermont will yield to me for a moment, I fear that, standing in the back row, I did not make myself heard throughout the Senate.

Let me say, for the benefit of the Senator from Vermont and for the benefit of the Senate, that when the clerk, in reading the amendment, reached line 5 on page 5, I interrupted him and said that subparagraph (c) was in apparent conflict with subparagraph (b) of section 6, on page 7, as reported by the Judiciary Committee. I regarded the two provisions as subject to the interpretation of stating conflicting purposes. Obviously that is correct, because subparagraph (c) of section 3, on page 5, provides that—

> The funds appropriated under the authorization contained in this joint resolution shall, with the approval of the committee, be available for expenditure by the committee and by such Departments and agencies as the committee may designate to cooperate with the committee in carrying out the provisions of this joint resolution.

The Senator will recall that that language was drawn before there was any provision whatsoever for an allocation of $400,000 for distribution by the President upon application by the committee. With the provisions of subparagraph (b) of section 6, on page 7, as reported by the Judiciary Committee, there was no need whatsoever for subparagraph (c) of section 3, on page 5. It was for that reason that I made the motion that the committee amendment be amended by eliminating subparagraph (c) of section 3, on page 5.

If the Senator feels that there is any conflict, of course I am perfectly willing that the matter shall be reviewed entirely and completely at length. However, I think there is no conflict.

Mr. AUSTIN. Mr. President, it will make no difference about the result whether or not we proceed in a parliamentary manner and reconsider the vote, and vote over again, because the same thing will take place which has already taken place. The Senate is acting under an influence which is apparently irresistible. It cannot stop to consider arguments pro and con.

Think of it. The language now sought to be stricken from the joint resolution by the Senator from Wyoming was his own language in his original resolution, Senate Joint Resolution 291, and was compatible with his original statement as to who should control the expenditure of the funds. Senate Joint Resolution 291, page 3, line 22, starts with the very language which the Senator now asks to have stricken from the joint resolution. Senate Joint Resolution 291, page 6, line 5, starts with his idea of who should control the appropriation, or the $500,000 authorized to be appropriated. It was all on the theory that this was a congressional investigation, and that the legislative body would take charge of it and direct the investigation and the control of funds.

It all goes together. We agreed in the committee that we would strike out paragraph (c) one sentence, namely, the first sentence contained in lines 4 to 6, solely because it was a duplication of the same words on the same page in lines 14 to 17. The committee unanimously agreed to that, and adopted the language of the Senator from Wyoming for the remainder of the paragraph, and the matter came here by the unanimous consent and agreement of the Judiciary Committee of the Senate, which had deliberately adopted that language. Now it has been slipped over here. I am willing to let it go on that kind of a deal, because I know it will not do any good to reconsider it.

I desire to say, before a vote is taken on the other matter—we apparently have arrived at page 7 of the joint resolution—that there seems to be a disposition to go back on the decision of the Judiciary Committee, as made, to amend the language in line 10 on page 7, and to disagree to the recommendation of the Judiciary Committee, and thereby to restore the joint resolution to the condition in which the President shall direct the expenditure of $400,000, four-fifths of all the money provided.

Mr. President, the joint resolution which we are considering is not the President's joint resolution. This is not the idea of the President of the United States. Some of the most important features of the pending joint resolution arose in the brain of the Senator from Wyoming [Mr. O'MAHONEY] and have been known here for months; and we have had committees studying these ideas for months. Take, for example, the standardization provisions of the joint resolution, and the establishment of national standards for corporations engaged in commerce among the States and with foreign nations. That is the backbone of the O'Mahoney-Borah bill, upon which we have spent days and days taking important testimony, upon which I hope we shall take much more testimony, and upon which subject I expect that the committee will collect valuable information and bring it to us for our further consideration of that important question in the next session of the Congress.

I have before me the President's message on this subject. That idea cannot be found in it anywhere. Indeed, the President's proposal was a wholly different proposal than that contained in the joint resolution now before us. Let us not delude ourselves with the idea that we are snatching away from the President of the United States something which he originated or initiated. His recommendation was not for a legislative investigation. This was his recommendation:

The study should be comprehensive and adequately financed. I recommend an appropriation of not less than $500,000 for the conduct of such comprehensive study by the Federal Trade Commission, the Department of Justice, the Securities and Exchange Commission, and such other agencies of government as have special experience in various phases of the inquiry.

There is no idea of a congressional investigation in that recommendation to the Congress. Moreover, if there were, let me call attention to the date of this document—April 29, 1938. Long before that, weeks before that, the idea of a congressional investigation, a legislative study, was made in the following language. I am about to read something that occurred on March 3, 1938, as shown by the CONGRESSIONAL RECORD, at page 2757:

My proposition is this: Let us create a nonpolitical, nonpartisan commission, which will have for its duties the restatement of the law relating to monopolies and trusts. The great criticism that we hear in all the different committees on which I sit is that there is no definition of monopoly. There is no clear, precise statement of what the law is. It is all in confusion. Let us define "monopoly." Let us prescribe the elements of offenses. Let us include in the law the affirmative principles that shall govern business as well as the negative ones. Let us study the relations of business—that is, of bigness, that is so much criticized. Let us study that relation to the general welfare, and to domestic and foreign trade, and let us comprehensively revise the various trade acts to give certainty to business with respect to what is lawful and what is unlawful. Let us aim at encouragement of private initiative, investment, and enterprise.

That, and much more, was stated on the floor of the Senate more than a month and a half before a suggestion of the kind made by the President came to us from him; but he did not recommend that, Mr. President. He recommended an investigation by the Departments—that was what he wanted—Departments which have a predilection; Departments which are already biased and prejudiced; Departments whose men come before us in the committees considering such bills as the O'Mahoney-Borah bill and take an extreme position, one that is well calculated to frighten business and to deter recovery. The President wanted an investigation by such men as Jackson, whose position on the stump of the country was enough to alarm anybody who had any money at all to invest in enterprise and to stimulate the Nation's business.

When we talk about departing from the President's program, I will say that this joint resolution may permit such action, such an inquisition, but that is not its objective. As the members of the Judiciary Committee considered it, in conversing with each other and in hearing it explained by its author, the object of the pending measure was a legislative investigation in which the Congress would perform its function, and it was a wholly different function from that expressed in the President's message. Therefore, it is eminently proper, and no slap at the President or anybody else, for us to make consistent the legislation we have before us. We are not trying to create an inquisitorial body to be effective through the prosecutory powers of our Government. We are trying to create an inquiry that is legislative in character and objective. Let us do it. Let us not, under the guise and the front of a legislative investigation, take four-fifths of $500,000 and turn it over to the prosecution of the aspect of the joint resolution which might be construed to be in conformity with the President's message.

There is only a small part of the pending joint resolution which is in conformity with the President's message. All I want is to see the good done and the bad stopped. That is why I think it is just too bad to mix up all this matter now, after we as a committee have done what we did to the joint resolution; to come in here on the floor of the Senate and overturn all that the committee did, in order that we may now satisfy the Chief Executive, in order that we may not do anything which could possibly be given the color of an affront to him. We do not give affront when we say to the President of the United States, "We appropriate money for you to expend on such and such and such things." We do that because the Constitution requires it of us. That is what it is our business to do. When matters have reached such a stage that a Senator cannot stand on the floor of the United States Senate and insist upon the legislative department of the Government performing its function of appropriation without his action being treated as an affront to the Chief Executive, we certainly have demeaned ourselves beneath our dignity.

Mr. HATCH. Mr. President, I do not desire to take the time of the Senate to discuss the pending amendment, but certain remarks made by the Senator from Vermont concerning the parliamentary situation which developed a moment ago compel me to make a brief statement concerning the situation and the remark made by the Senator from Vermont to which the then occupant of the Chair, I myself, took offense, and I did take offense.

Mr. AUSTIN. Mr. President, I beg the Senator's pardon.

Mr. HATCH. The remark was that something had been "slipped over." Those were the words.

Mr. AUSTIN. Mr. President, I beg the Senator's pardon, and I retract it entirely. I hope the Senator will accept my apology.

Mr. HATCH. Certainly the Senator from New Mexico accepts the apology of the Senator from Vermont, but it was unfortunate language.

Mr. AUSTIN. Yes; I acknowledge that, and I am very sorry for it.

Mr. HATCH. The Senator from New Mexico, in the chair at that time, understood the request of the Senator from Wyoming perfectly, just as he stated it.

Mr. AUSTIN. In what I said I did not mean what the Senator understood me to mean.

Mr. HATCH. I want it to be plain, and I want it understood publicly, that there was no effort on the part of the Senator from Wyoming or the occupant of the chair or anyone else to "slip anything over" the Senator from Vermont or anybody else, and I wish to say in behalf of the Senator from Wyoming that in the committee and on the floor of the Senate he has tried to handle a difficult situation, and at times a delicate situation, in a fair, square, honest manner to everyone concerned.

Mr. AUSTIN. Mr. President, I think the Senator is entirely justified in his statement, and I accept the criticism fully. I did not mean, however, just what the Senator understood.

Mr. O'MAHONEY. Mr. President, I understand the parliamentary situation to be that the question is upon my motion to perfect the amendment beginning on line 11, page 5, by striking out paragraph (c).

The PRESIDING OFFICER (Mr. MCGILL in the chair). The question is on the motion of the Senator from Wyoming to strike out paragraph (c) of section 3, on page 5.

The amendment to the amendment was agreed to.

The PRESIDING OFFICER. The question now is upon the committee amendment as amended.

Mr. BURKE. Mr. President, this is a very important amendment, and I should not like to see it acted on without the full membership of the Senate present.

Mr. O'MAHONEY. Mr. President, I hope the Senator from Nebraska will withhold his suggestion of the absence of a quorum. He might be justified in raising the question when we come to vote on the really controversial amendment, on page 7, but I think there is no controversy about the pending amendment.

Mr. BURKE. What is the amendment now pending?

The PRESIDING OFFICER. The question is on the committee amendment, on page 4, section 3, as amended by the amendment of the Senator from Wyoming.

Mr. BURKE. The point is well taken. I thought we had passed on that already.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment as amended.

The amendment as amended was agreed to.

The PRESIDING OFFICER. The clerk will state the next amendment of the committee.

The LEGISLATIVE CLERK. On page 7, after the word "available", on line 9, it is proposed to insert "on application by the committee for allocation."

Mr. BARKLEY. Mr. President, in view of the fact that we have already gone beyond the regular hour of adjournment, and the Senator from Nebraska is anxious for the appearance of his absent colleagues, and not desiring to inconvenience them by asking them to return at this hour, I think we will suspend at this time and let this amendment go over until tomorrow.

ATTENDANCE OF MARINE BAND AT NATIONAL ENCAMPMENT OF G. A. R.

Mr. WALSH. Mr. President, from the Committee on Naval Affairs, I report back favorably without amendment House bill 10722, and I ask for its immediate consideration. There is no controversy about it.

The PRESIDING OFFICER. Is there objection?

There being no objection, the Senate proceeded to consider the bill (H. R. 10722) to authorize the attendance of the Marine Band at the national encampment of the Grand Army of the Republic to be held at Des Moines, Iowa, September 4 to 8, inclusive, 1938, which was ordered to a third reading, read the third time, and passed.

AGRICULTURAL DEPARTMENT APPROPRIATIONS—CONFERENCE REPORT

Mr. RUSSELL submitted a conference report.

(For conference report on H. R. 10238, see House proceedings, p. 8765.)

The report was agreed to.

MARTIN BRIDGES

The PRESIDING OFFICER laid before the Senate a message announcing the action of the House of Representatives disagreeing to the amendment of the Senate to the bill (H. R. 1872) for the relief of Martin Bridges, and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. BROWN of Michigan. I move that the Senate insist upon its amendment, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. BAILEY, Mr. BROWN of Michigan, and Mr. CAPPER conferees on the part of the Senate.

WILLIAM J. SCHWARZE

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 1788) for the relief of William J. Schwarze, which were, on page 1, line 6, to strike out "his"; in line 7, to strike out all after the word "States" down to and including the word "private", in line 8, and insert "for loss of the personal"; in line 9, to strike out "was lost" and insert "a minor"; in lines 10 and 11, to strike out "his son" and insert "he"; in line 11, to strike out "(2)"; and in line 12, to strike out "him" and insert "said William J. Schwarze."

Mr. DUFFY. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

HAFFENREFFER & CO., INC.

The PRESIDING OFFICER laid before the Senate a message announcing the action of the House of Representatives disagreeing to the amendment of the Senate to the bill (H. R. 5743) for the relief of Haffenreffer & Co., Inc., and requesting a conference with the Senate on the disagreeing votes of the two Houses thereon.

Mr. SCHWELLENBACH. I move that the Senate insist upon its amendment, agree to the request of the House for a conference, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. BURKE, Mr. SCHWELLENBACH, and Mr. CAPPER conferees on the part of the Senate.

ANNIE MARY WILMUTH

The PRESIDING OFFICER laid before the Senate the amendments of the House of Representatives to the bill (S. 546) for the relief of Annie Mary Wilmuth, which were, in line 9, after the name "Wilmuth", to insert "of Phoenix, Ariz."; in the same line, to strike out "disability" and insert "tuberculosis"; in line 10, after the word "contracted", to insert "between May 1926 and August 1927"; and in line 13, after the word "act", to insert a colon and "*Provided further*, That claim hereunder shall be filed within 6 months after approval of this act."

Mr. HAYDEN. I move that the Senate concur in the amendments of the House.

The motion was agreed to.

RELIEF OF CERTAIN OFFICERS AND SOLDIERS OF THE VOLUNTEER SERVICE

Mr. BARKLEY. Mr. President, I wish to submit a conference report on the bill (H. R. 2904) for the relief of officers and soldiers of the volunteer service of the United States mustered into service for the War with Spain and who were held in service in the Philippine Islands after the ratification of the treaty of peace, April 11, 1899, and to ask for its immediate consideration.

Mr. KING. Mr. President, the junior Senator from Kentucky and myself had an understanding that this was not to be taken up, since he knew that I desired to submit some comments on the matter.

Mr. BARKLEY. I ask that the matter go over until tomorrow.

The PRESIDING OFFICER. Without objection, it is so ordered.

WABASH RIVER BRIDGE, INDIANA

Mr. MINTON. Mr. President, I ask unanimous consent that the Senate consider House bill 10076, providing for a bridge across the Wabash River at or near New Harmony, Ind.

The PRESIDING OFFICER. Is there objection?

There being no objection, the bill (H. R. 10076) to create the White County Bridge Commission; defining the authority, power, and duties of said commision; and authorizing said commission and its successors and assigns to purchase, maintain, and operate a bridge across the Wabash River at or near New Harmony, Ind., was considered, ordered to a third reading, read the third time, and passed.

DISBURSEMENT OF FUNDS FOR CARE OF EQUIPMENT, ETC., OF NATIONAL GUARD—CONFERENCE REPORT

Mr. JOHNSON of Colorado submitted the following report:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H. R. 9721) authorizing the disbursement of funds appropriated for compensation of help for care of material, animals, armament, and equipment in the hands of the National Guard of the several States, Territories, and the District of Columbia, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate, and agree to the same.

ED. C. JOHNSON,
ERNEST LUNDEEN,
H. C. LODGE, JR.,
Managers on the part of the Senate.

A. J. MAY,
R. EWING THOMASON,
DOW W. HARTER,
W. G. ANDREWS,
L. C. ARENDS,
Managers on the part of the House.

The report was agreed to.

FARM SECURITY ADMINISTRATION

Mr. BROWN of Michigan. Mr. President, yesterday the Senate passed Senate bill 3779. The day before an identical House measure, House bill 8673, had been passed in the House. I ask unanimous consent that the proceedings by which the Senate bill was passed be vacated, and that House bill 8673 be now considered.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and the vote by which the Senate bill 3779 was passed is reconsidered. Is there objection to the request of the Senator from Michigan that the Senate consider House bill 8673?

There being no objection, the bill (H. R. 8673) for the relief of certain persons at certain projects of the Farm Security Administration, United States Department of Agriculture, was considered, ordered to a third reading, read the third time, and passed.

The PRESIDING OFFICER. Without objection, Senate bill 3779 will be indefinitely postponed.

ALTERATIONS AND REPAIRS TO AIRPLANE CARRIERS "LEXINGTON" AND "SARATOGA"

Mr. WALSH. Mr. President, yesterday in my absence the distinguished Senator from Utah [Mr. KING] objected to certain bills on the calendar because they needed explanation, and in order that I may be given that opportunity now, I ask that the Senate first consider House bill 7560, which is Calendar No. 2053.

Mr. AUSTIN. Mr. President, I should like to know what the bill is.

Mr. WALSH. Mr. President, I think after an explanation is made there will be no objection to the bill. The bill authorizes the alteration and repairs to certain naval vessels. Under existing law the Navy can repair any vessel it chooses without further authorization, but cannot exceed $450,000 for such repair or alteration work. Therefore, when it becomes necessary to repair a major vessel it is necessary to get legislation authorizing it.

There are two large and important airplane carriers in the Navy, the *Lexington* and the *Saratoga*, which were originally made over from battle cruisers to airplane carriers. They are the best and finest airplane carriers in the world. We have since then built other airplane carriers, but they are inferior in size and in usefulness to the two I mention. The airplane carriers *Saratoga* and *Lexington* carry more planes than any other naval airplane carriers. They are in serious need of repair. If a new airplane carrier were to be built instead of the existing airplane carriers being repaired, each new carrier would cost at least $20,000,000. The two carriers in question can be repaired for $15,000,000, or about $7,500,000 apiece.

The Navy Department strongly urges the authorization of the repair work. The House has passed the bill. The Senate Committee on Naval Affairs favorably reported a similar bill last session, and again in this session. I sincerely hope favorable action will be taken, because, in my opinion, I will say to the Senator from Utah, the repairing of these vessels may save the asking of appropriations in the next naval bill for new airplane carriers.

Mr. KING. Mr. President, will the Senator yield?

Mr. WALSH. I yield.

Mr. KING. My recollection is that the *Lexington* and the *Saratoga* were constructed along in 1920 or thereabouts.

Mr. WALSH. They were battle cruisers which would have been scrapped as the result of the Washington Treaty were it not for the fact that they were made over into airplane carriers. The Washington Treaty did not deal with airplane carriers, so the battle cruisers were made over into airplane carriers.

Mr. KING. Some criticism has been brought to my attention from time to time that they were too large, and that better airplane carriers could be constructed than are the *Lexington* and *Saratoga*, and that to perpetuate them as airplane carriers is a mistake.

Mr. WALSH. I have heard that suggestion made, but I can say frankly that in the judgment of the naval authorities now, and in the judgment of the committee which has considered those factors, it is most desirable that these airplane carriers should be made over. My personal opinion is that I should much prefer to have these carriers made over than to have two new airplane carriers built.

Mr. KING. Why could not the Navy Department, out of the five hundred and fifty-odd million dollars which we have appropriated for the Navy for the next year, plus the nearly one billion for new naval construction, a total of a billion and a half dollars, find the necessary funds?

Mr. WALSH. Even if the Navy found the funds they could not use them.

Mr. KING. Why not?

Mr. WALSH. Because it is first necessary to have an authorization.

Mr. KING. Then why not authorize the Navy Department to use the amount necessary for this purpose out of the billion and one-half dollars which we have appropriated and authorized this year to the expenses of the Navy? Why could not we authorize the Navy to deduct the amount required from the vast sums which we have appropriated for it?

Mr. WALSH. When the emergency appropriation bill comes before us some such amendment could be offered, but the only function that I have, not being a member of the Appropriations Committee, is to decide whether or not it is a wise and efficient policy for the reconstruction and repair of these very important naval vessels.

Mr. KING. Is the Senator asking for a direct appropriation?

Mr. WALSH. No; I am not. I am only asking for an authorization. The money may not be appropriated so far as this operation is concerned, but the proposed action lays the foundation for an appropriation.

Mr. KING. Mr. President, I know that any effort to procure economy in military and naval expenditures and appropriations and authorizations in this time of hysteria of spending will be futile. I shall not object to the present consideration of the bill, but I should like to be recorded as voting "no" on the passage of the measure.

Mr. WALSH. I appreciate the attitude of the Senator from Utah.

The PRESIDING OFFICER (Mr. MCGILL in the chair). Is there objection to the present consideration of House bill 7560?

There being no objection, the Senate considered the bill (H. R. 7560) to authorize alterations and repairs to certain naval vessels, and for other purposes, which was ordered to a third reading, read the third time, and passed, as follows:

Be it enacted, etc., That for the purpose of modernizing the United States ships *Lexington* and *Saratoga* alterations and repairs to such vessels are hereby authorized and expenditures therefor shall not be limited by the provisions of the act approved July 18, 1935 (49 Stat. 482), but the total cost of such alterations and repairs shall not exceed $15,000,000: *Provided*, That the alterations and repairs to naval vessels authorized by this act shall be subject to the provisions of such treaty or treaties limiting naval armaments as may be in effect at the time such alterations and repairs are undertaken.

INCREASE OF PRIVATES, FIRST CLASS, IN MARINE CORPS FROM 25 TO 50 PERCENT

Mr. WALSH. Mr. President, in my absence another bill was passed over yesterday because I was unfortunately absent and unable to explain it. I ask now for the immediate consideration of Senate bill 3337, being calendar No. 2075, and I shall briefly explain the bill before it is taken up.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

Mr. LA FOLLETTE. Mr. President, let us understand what the bill is before that action is taken.

The PRESIDING OFFICER. The clerk will state the bill by title.

The CHIEF CLERK. A bill (S. 3337) to amend section 2 of the act entitled "An act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes," approved May 22, 1917, as amended, to increase the authorized percentage

of privates, first-class, in the Marine Corps from 25 to 50 percent of the whole number of privates.

The PRESIDING OFFICER. Is there objection to the present consideration of the bill.

Mr. LA FOLLETTE. Mr. President, before consent is given to take up the measure I should like to hear the explanation which the Senator from Massachusetts said he would make of the bill.

Mr. WALSH. That is a very proper request.

Mr. President, the pay given to privates in the Marine Corps in the Navy is $21 a month. The pay for enlisted men in the Navy is $30 a month. The maximum pay in the Army is the same. We are not asking that that pay be changed. But a young man enlisted in the Marine Corps has an ambition to be advanced to be what is called first-class private. When, upon the recommendation of his officers he reaches that position, he receives $30 a month.

The law fixes the percentage out of the total of enlisted men in the Marine Corps who can be given opportunity to be declared to be first-class privates after 1 year at 25 percent of that total. There is no difficulty in reaching that percentage, 25 percent, and it is always complete. The number who can be promoted to that ratio is determined and fixed. We have 17,000 enlisted men in the Marine Corps, of which number only 2,946 are privates, first class.

The Navy asks to make that percentage 50 percent. The bill puts it at 40 percent, so that 40 percent of the enlisted men, after a year's service, if found by their superior officers to be entitled to be promoted from $21 to $30, will be so promoted.

Let me say in this connection that from my observation of the personnel in the Marine Corps and in the Navy and the Army, the personnel in the Marine Corps is superior, if I may be permitted to say so, and that is no reflection upon the others. Many high-school graduates, many college men are in the Marine Corps. But there is absolutely an appalling situation in the Marine Corps because there is nothing for the enlisted man in the way of promotion except this 25-percent provision.

In the Navy it is possible for an enlisted man, by going to the Navy schools, to reach a wage of $75, $100, or $125 a month by becoming a first-class mechanic. The result is that the Marine Corps is training the men, and they are moving to the Army or to the Navy, and the Marine Corps has become a constantly shifting body. The number of reenlistments is appallingly small because of this fact. The wage of $21 a month is miserable and indefensible for young men who enlist in the Marine Corps. All the bill does is to permit the number who may be promoted and raised to the rank of first-class enlisted man to be increased from 25 to 40 percent of the total. The Navy Department asked for 50 percent, but the committee made it 40 percent.

Mr. LA FOLLETTE. Mr. President, I am satisfied with the Senator's explanation. I have no objection.

Mr. KING. Mr. President, will the Senator yield?

Mr. WALSH. I yield.

Mr. KING. If the 40-percent limit is established, how many enlisted men will fall in that category?

Mr. WALSH. A total of about 17,000 is now authorized, of which number only 2,947 are privates, first class.

Mr. KING. Of course, the personnel is not static. That is to say, there may be 12,000 this year, and next year there may be 15,000 or 20,000, because undoubtedly with the militaristic spirit which prevails today, the Marine Corps will be greatly augmented. The number of 12,000 would mean an addition of $1,200,000 to the stupendous sum which we have already appropriated for the Navy. As I stated a moment ago, there is no chance in this body to stop appropriations for the Army and Navy, or for anything else, for that matter.

Mr. WALSH. Mr. President, the increase would be about $196,000 per year. I sympathize with the Senator. Let me say to the Senator that I feel that it is a painful duty to ask for money for the Navy, in view of the large appropriations which have already been made. However, we have a situation where young men are receiving only $21 a month in the finest body of defense forces in the country. I have visited the Marine barracks on the east and west coasts, and have asked the men standing in front of me to indicate, by raising their hands, how many intended to reenlist. I was shocked to find that a very large percent of the men get out of the Marine Corps without reenlisting, because they see no opportunity for advancement by continuing their service. The men we are able to hold in the Marine Corps are the men whom we advance to first class.

Let me say to the Senator from Utah [Mr. KING] that I appreciate his position, and I sympathize with it. Only a short time ago I said to the Senator from Kentucky [Mr. BARKLEY] that one of the painful duties of my committee is to ask for readjustments and other things which involve increases in naval expenses. I feel that the pending measure is meritorious and will tend to remove an injustice in pay to the worthy privates in the Marine Corps.

Mr. KING. I express my appreciation of the sympathetic utterances of my friend. I receive a great deal of sympathy in my efforts for economy, but I do not obtain votes. I see appropriations multiply and increase as the years go by. Pretty soon we shall be appropriating over $2,000,000,000—perhaps two and a half billion dollars—for the Army and Navy, with an increased appropriation each year. The taxpayers will have to pay it sooner or later. We are increasing the burdens on the taxpayers.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill (S. 3337) to amend section 2 of the act entitled "An act to temporarily increase the commissioned and warrant and enlisted strength of the Navy and Marine Corps, and for other purposes," approved May 22, 1917, as amended, to increase the authorized percentage of privates, first-class, in the Marine Corps from 25 to 50 percent of the whole number of privates, which had been reported from the Committee on Naval Affairs with an amendment, to strike out all after the enacting clause and insert:

That section 2 of the act entitled "An act making appropriations for the naval service for the fiscal year ending June 30, 1919, and for other purposes," approved July 1, 1918 (40 Stat. 714; title 34 U. S. C., sec. 691c), is hereby amended by striking out the words "twenty-five" appearing in lines 6 and 7 of the said section and substituting therefor the word "forty."

Mr. McADOO. Mr. President——

The PRESIDING OFFICER. Does the Senator desire recognition on the pending bill?

Mr. McADOO. I do.

I merely wish to express my entire approval of what the Senator from Massachusetts [Mr. WALSH] has said. The existing situation is an obvious injustice, and it is harmful to the efficiency and the esprit de corps of the Marine Corps. I think it should be corrected. In my judgment, a great government such as ours should not be put in the position of doing such a grave injustice to the enlisted men in the Marine Corps.

I heartily support the bill.

The PRESIDING OFFICER. The question is on agreeing to the committee amendment.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill to amend section 2 of the act entitled 'An act making appropriations for the naval service for the fiscal year ending June 30, 1919, and for other purposes,' approved July 1, 1918, to increase the authorized percentage of privates, first class, in the Marine Corps from 25 to 40 percent of the whole number of privates."

AMENDMENT OF CIVIL SERVICE RETIREMENT ACT

Mr. NEELY. Mr. President, I should like to propound an inquiry to the leader, the distinguished Senator from Kentucky [Mr. BARKLEY].

Since the 25th of April there has been on the Senate Calendar Senate bill 457, Order of Business 1715, a bill to

amend sections 1 and 6 of the Civil Service Retirement Act, approved May 29, 1930.

So far as I can ascertain, only one Senator has any objection to any provision of the bill. I believe not more than 30 minutes of the time of the Senate would be required to pass the bill.

I now inquire of my able leader if he cannot cooperate with me tomorrow in bringing this measure before the Senate and obtaining action upon it.

Mr. BARKLEY. I do not know whether or not we can do it tomorrow. I will say to the Senator that I shall be very glad to cooperate with him to have the bill considered as soon as possible. We may have a pretty full day's business tomorrow. The Senator has spoken to me about the bill. I desire to help him gain consideration of the bill, but I am unable to designate the time.

Mr. NEELY. I thank the Senator. I sincerely hope we may be able to proceed with the consideration of the bill before the end of the next legislative day.

EXECUTIVE SESSION

Mr. BARKLEY. I move that the Senate proceed to the consideration of executive business.

The motion was agreed to; and the Senate proceeded to the consideration of executive business.

EXECUTIVE MESSAGES REFERRED

The PRESIDING OFFICER (Mr. McGILL in the chair) laid before the Senate messages from the President of the United States submitting sundry nominations, which were referred to the appropriate committees.

(For nominations this day received, see the end of Senate proceedings.)

EXECUTIVE REPORTS OF COMMITTEES

Mr. McKELLAR, from the Committee on Post Offices and Post Roads, reported favorably the nominations of sundry postmasters.

Mr. McGILL, from the Committee on the Judiciary, reported favorably the nomination of Anton J. Lukaszewicz, of Wisconsin, to be United States marshal for the eastern district of Wisconsin.

Mr. LOGAN, from the Committee on the Judiciary, reported favorably the nomination of Charles E. Dierker, of Shawnee, Okla., to be United States attorney for the western district of Oklahoma, vice William C. Lewis, whose term will expire June 18, 1938.

Mr. PITTMAN, from the Committee on Foreign Relations, reported favorably, without reservation, Executive F, Seventy-fifth Congress, third session, a convention between the United States of America and the Netherlands, signed at Washington on March 18, 1938, providing for the arbitration of a difference between the Governments of the two countries in regard to the sufficiency of the payment made by the Government of the United States of America to the Government of the Netherlands for certain military supplies of the Netherlands Government which were requisitioned in 1917, and submitted a report (Ex. Rept. No. 14) thereon.

The PRESIDING OFFICER. The reports will be placed on the executive calendar.

BOARD OF TAX APPEALS

Mr. HARRISON. Mr. President, from the Committee on Finance, I report certain nominations, and, after they have been read, I shall ask unanimous consent that they be confirmed this afternoon, for the reason that they represent four nominations for reappointment to the Board of Tax Appeals. The terms ended on the 1st of June and the incumbents are now serving without pay. An important meeting of the Board is scheduled for tomorrow. I have spoken to the Senator from Oregon [Mr. McNARY] and the Senator from Kentucky [Mr. BARKLEY] about the matter. It seems to me that because of the peculiar situation, these nominations should be confirmed this afternoon, and I make that request.

The PRESIDING OFFICER. The Senator from Mississippi reports certain nominations from the Committee on Finance, and asks for their immediate consideration. Is there objection?

Mr. AUSTIN. Mr. President, I have not yet heard the names.

The PRESIDING OFFICER. The clerk will state the nominations to the Board of Tax Appeals.

The legislative clerk read the nominations of Charles R. Arundell, of Oregon; John W. Kern, of Indiana; Clarence V. Opper, of New York; and John A. Tyson, of Mississippi, to be members of the Board of Tax Appeals.

Mr. HARRISON. Let me say that these four nominations were approved by the Senators from the respective States.

Mr. AUSTIN. The Senator from Oregon [Mr. McNARY] spoke to me about the matter before he was called from the Chamber. I have no objection.

The PRESIDING OFFICER. Without objection, the nominations are confirmed.

Mr. HARRISON. I ask that the President be notified.

The PRESIDING OFFICER. Without objection, the President will be notified.

If there be no further reports of committees, the clerk will state the nominations on the calendar.

THE JUDICIARY

The legislative clerk read the nomination of Gordon Campbell, of Carmel, Calif., to be marshal of the United States Court for China.

The PRESIDING OFFICER. Without objection, the nomination is confirmed.

Mr. McADOO subsequently said: I ask that the President be notified of the confirmation of the nomination of Mr. Gordon Campbell as marshal of the United States Court for China.

The PRESIDING OFFICER. Without objection, it is so ordered.

POSTMASTERS

The legislative clerk proceeded to read sundry nominations of postmasters.

Mr. McKELLAR. Mr. President, I ask that the nominations of postmasters on the calendar be confirmed en bloc.

The PRESIDING OFFICER. Without objection, the nominations of postmasters are confirmed en bloc.

That concludes the calendar.

Mr. McKELLAR. Mr. President, about three or four hundred nominations of postmasters have been submitted to the Senators from the several States, and those Senators have approved the nominations, which are now before the Senate. I ask unanimous consent that the nominations which have been approved by the Senators be confirmed en bloc at this time, though they are not on the printed calendar.

Mr. AUSTIN. Mr. President, I am sure I do not know what the effect of that action may be.

Mr. McKELLAR. If the Senator has any doubt about it, I will withdraw the request; but it costs a good deal to print the names on the calendar.

Mr. AUSTIN. May I request that if, on tomorrow, an objection should arise to the confirmation of any of these nominations, the matter will be reconsidered?

Mr. McKELLAR. That will be done. If any Senator desires a reconsideration, it will be done.

Mr. BARKLEY. I understand that all these nominations have been reported from the committee.

Mr. McKELLAR. All of them have been reported from the committee. They were first submitted to the Senators from the several States, and were reported on by those Senators, and then were reported by the committee. If any Senator objects to any one of them tomorrow, it will be reconsidered, of course.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Tennessee? Without objection, the nominations of the postmasters referred to are confirmed en bloc.

RECESS

The Senate resumed legislative session.

Mr. BARKLEY. I move that the Senate take a recess until 12 o'clock noon tomorrow.

The motion was agreed to; and (at 5 o'clock and 41 minutes p. m.) the Senate took a recess until tomorrow, Thursday, June 9, 1938, at 12 o'clock meridian.

NOMINATIONS

Executive nominations received by the Senate on June 8 (legislative day of June 7), 1938

PROMOTIONS IN THE NAVY

Lt. Herbert S. Duckworth to be a lieutenant commander in the Navy, to rank from the 1st day of April 1938.

The following-named lieutenants to be lieutenant commanders in the Navy, to rank from the 2d day of June 1938:

Harold E. Parker
William L. Freseman

The following-named lieutenants (junior grade) to be lieutenants in the Navy, to rank from the 2d day of June 1938:

Samuel P. Weller, Jr.
Edward Brumby
Edward E. Colestock
Edward N. Little

The following-named ensigns to be lieutenants (junior grade) in the Navy, to rank from the 6th day of June 1938:

John M. Lee
James L. P. McCallum
Robert S. Burdick
Howard Z. Senif
Thomas F. Sharp
Cyrus C. Cole
Richard B. Lynch
Thomas S. Baskett
Roscoe F. Dillen, Jr.
Mason B. Freeman
William C. Abhau
Dewitt A. Harrell
William F. Petrovic
Ben W. Sarver, Jr.
Jesse B. Gay, Jr.
Ralph M. Metcalf
John N. Shaffer
Blake B. Booth
Clement E. Langlois
Edward B. Schutt
Evan T. Shepard
Anthony Talerico, Jr.
Walter A. Moore, Jr.
Grover S. Higginbotham
Noel A. M. Gayler
John R. Lewis
Kenneth L. Veth
William P. Gruner, Jr.
John W. Thomas
Clinton A. Neyman, Jr.
Donald N. Clay
John H. Maurer
John W. McCormick
J. C. Gillespie Wilson
John J. Baranowski
James R. North
Robert S. Mandelkorn
John D. Gerwick
Stephen W. Carpenter
Kenneth West
Omar N. Spain, Jr.
James M. Wolfe, Jr.
Melvin E. Radcliffe
John S. Fletcher
Keats E. Montross
David Nash
Raymond M. Parrish
Frederic W. Brooks
Chester A. Briggs
James W. Thomson
William T. Powell, Jr.
Eugene B. Fluckey
Vincent A. Sweeney
John H. Brandt
Thomas H. Henry
John S. Barleon, Jr.
Norman D. Gage
Harold J. Islev-Petersen
Frank E. Sellers, Jr.
William B. Wideman
Oliver D. Finnigan, Jr.
Eli T. Reich
Louis E. Schmidt, Jr.
John J. Foote
John J. Flachsenhar
Vincent A. Sisler, Jr.
Henry C. Tipton
Roy C. Klinker
William C. Thompson, Jr.
Sherwood H. Dodge
George E. Davis, Jr.
Edgar S. Keats
Frank McE. Smith
Ross E. Freeman
Bruce P. Ross
John O. Curtis
Christian L. Ewald
Marion F. Ramirez de Arellano
John A. Heath
Alton E. Paddock
Russell H. Smith
Samuel F. Spencer
Matthew S. Schmidling
Arthur M. Purdy
Fenelon A. Brock
Joseph H. Wesson
Jefferson D. Parker
Jack M. Seymour
Philip F. Hauck
Robert E. Riera
John F. Murdock
Elbert M. Stever
George L. Conkey
Gordon E. Schecter
Frank K. B. Wheeler
Victor M. Cadrow
Franklin G. Hess
Carleton R. Kear, Jr.
Thomas D. McGrath
Warren J. Bettens
Frank B. Herold
Frederick M. Stiesberg
Nevett B. Atkins
Walter F. Henry
Charles B. Langston
Ted A. Hilger
John H. Cotten
Ralph J. Baum
Lloyd A. Smith
Thomas D. Shriver
George A. Crawford
Robert H. Prickett
Grafton B. Campbell
Briscoe Chipman
Maurice F. Fitzgerald
Thomas R. Mackie
Arthur V. Ely
Walter J. East, Jr.
William S. Guest
Eugene A. Barham
George Philip, Jr.
Robert W. Jackson
Samuel Nixdorff
John B. Crosby
Francis M. Gambacorta
William J. Germershausen, Jr.
Alan McL. Nibbs
Dwight L. Moody
Walker A. Settle, Jr.
Marshall H. Austin
Marcus R. Peppard, Jr.
Robert A. Phillips
Harold W. McDonald
Stanley W. Lipski
Frederick R. Matthews
James H. Brown
Everett H. Steinmetz
Robert Van R. Bassett, Jr.
Henry L. Muller
Manning M. Kimmel
John T. Probasco
William H. Hazzard
George H. Cairnes
Charles L. Harris, Jr.
LeRoy T. Taylor
Wilson R. Bartlett
Mark Eslick, Jr.
Ralph L. Ramey
Stephen H. Gimber
Turner F. Caldwell, Jr.
Carter B. Jennings
Bladen D. Claggett
Harrison P. McIntire
Richard E. Babb
Edwin H. Headland, Jr.
James S. Clark
Charles W. Consolve
French Wampler, Jr.
Leonard J. Baird
Gerald L. Christie
John S. C. Gabbert
Nicholas G. Doukas
Ronald K. Irving
Wilson G. Reifenrath
Horace C. Laird, Jr.
William Swab, Jr.
Edward D. Robertson
John W. Payne, Jr.
Allan C. Edmands
Richard H. Burns
Joseph E. Dougherty
Doyen Klein
Cecil E. Blount
Girard L. McEntee, Jr.
John N. Ferguson, Jr.
James F. Fitzpatrick, Jr.
George S. Lambert
George T. Baker
Arnold H. Newcomb
John G. Downing
Richard M. Farrell
Edward W. Bridewell
Robert M. Hinckley, Jr.
William T. Samuels
Hubert B. Harden
Don W. Wulzen
Joe R. Penland
Sibley L. Ward, Jr.

The following-named lieutenant commanders to be commanders in the Navy, to rank from the 2d day of June 1938:

John G. Farrell
Elbert C. Rogers

Lt. Lowe H. Bibby to be a lieutenant commander in the Navy, to rank from the 2d day of June 1938.

Machinist Nuel E. Blythe to be a chief machinist in the Navy, to rank with but after ensign, from the 2d day of April 1938.

Pay Clerk Clark Dunn to be a chief pay clerk in the Navy, to rank with but after ensign, from the 2d day of January 1938.

Pay Clerk Joseph H. Lillis to be a chief pay clerk in the Navy, to rank with but after ensign, from the 2d day of February 1938.

POSTMASTERS

ALABAMA

Francis G. Rowland to be postmaster at Childersburg, Ala., in place of F. G. Rowland. Incumbent's commission expired March 29, 1938.

William F. Croft to be postmaster at Crossville, Ala., in place of W. F. Croft. Incumbent's commission expires June 18, 1938.

Emma E. Yarbrough to be postmaster at Monroeville, Ala., in place of E. E. Yarbrough. Incumbent's commission expired June 8, 1938.

ARIZONA

Frank A. Rhodes to be postmaster at Gila Bend, Ariz., in place of F. A. Rhodes. Incumbent's commission expired April 27, 1938.

ARKANSAS

Lyle A. Wert to be postmaster at Garfield, Ark., in place of L. A. Wert. Incumbent's commission expired April 27, 1938.

CALIFORNIA

Vesta P. Basham to be postmaster at Castella, Calif., in place of E. T. Stanford, removed.

CONNECTICUT

Edward M. Doyle to be postmaster at Bantam, Conn., in place of E. M. Doyle. Incumbent's commission expired April 27, 1938.

Harry W. Potter to be postmaster at Glastonbury, Conn., in place of H. W. Potter. Incumbent's commission expired June 6, 1938.

Willis Hodge to be postmaster at South Glastonbury, Conn., in place of Willis Hodge. Incumbent's commission expired June 6, 1938.

DELAWARE

Claborne A. Boothe to be postmaster at Frankford, Del., in place of C. A. Boothe. Incumbent's commission expired May 7, 1938.

ILLINOIS

John W. Williams to be postmaster at Benton, Ill., in place of J. W. Williams. Incumbent's commission expired April 27, 1938.

William S. Westermann to be postmaster at Carlyle, Ill., in place of W. S. Westermann. Incumbent's commission expired May 28, 1938.

Carl J. Markel to be postmaster at Carpentersville, Ill., in place of C. J. Markel. Incumbent's commission expired June 6, 1938.

Fred O. Grissom to be postmaster at Kinmundy, Ill., in place of F. D. Grissom. Incumbent's commission expired April 27, 1938.

Fern Conard to be postmaster at La Moille, Ill., in place of Fern Conard. Incumbent's commission expires June 14, 1938.

Henry C. Johnson to be postmaster at Lawrenceville, Ill., in place of H. C. Johnson. Incumbent's commission expired April 27, 1938.

Nellie Waters to be postmaster at Murrayville, Ill., in place of Nellie Waters. Incumbent's commission expired May 3, 1938.

Alfred J. Geiseman to be postmaster at Shannon, Ill., in place of A. J. Geiseman. Incumbent's commission expires June 18, 1938.

J. Vernon Lessley to be postmaster at Sparta, Ill., in place of J. V. Lessley. Incumbent's commission expired May 3, 1938.

John W. Foster to be postmaster at Toluca, Ill., in place of J. W. Foster. Incumbent's commission expired May 22, 1938.

Melvin Higgerson to be postmaster at West Frankfort, Ill., in place of Melvin Higgerson. Incumbent's commission expired May 31, 1938.

Floyd E. Madden to be postmaster at Willow Hill, Ill., in place of F. E. Madden. Incumbent's commission expired June 6, 1938.

Mary I. Quinn to be postmaster at Wilmington, Ill., in place of M. I. Quinn. Incumbent's commission expired May 12, 1938.

Elmer M. Bickford to be postmaster at Wyanet, Ill., in place of E. M. Bickford. Incumbent's commission expired June 6, 1938.

INDIANA

Asa C. Clark to be postmaster at Bedford, Ind., in place of A. C. Clark. Incumbent's commission expired February 10, 1938.

Fred M. Briggs to be postmaster at Churubusco, Ind., in place of F. M. Briggs. Incumbent's commission expired May 3, 1938.

Jacob N. Hight to be postmaster at Etna Green, Ind., in place of J. N. Hight. Incumbent's commission expires June 18, 1938.

Ralph W. Kimmerling to be postmaster at Frankton, Ind., in place of R. W. Kimmerling. Incumbent's commission expires June 18, 1938.

Hazel R. Widdows to be postmaster at Geneva, Ind., in place of H. R. Widdows. Incumbent's commission expired May 3, 1938.

Lloyd A. Rickel to be postmaster at Mentone, Ind., in place of L. A. Rickel. Incumbent's commission expires June 18, 1938.

Cora Riley to be postmaster at Oaklandon, Ind., in place of Cora Riley. Incumbent's commission expires June 9, 1938.

Merton L. Hughbanks, to be postmaster at Scottsburg, Ind., in place of M. L. Hughbanks. Incumbent's commission expires June 9, 1938.

Mamie N. Judy to be postmaster at West Lebanon, Ind., in place of M. N. Judy. Incumbent's commission expired April 27, 1938.

Marion H. Rice to be postmaster at Wolcottville, Ind., in place of M. H. Rice. Incumbent's commission expired May 3, 1938.

IOWA

Martin W. Brockman to be postmaster at Clarksville, Iowa, in place of M. W. Brockman. Incumbent's commission expired May 24, 1938.

Albert B. Mahnke to be postmaster at Greene, Iowa, in place of A. B. Mahnke. Incumbent's commission expired May 7, 1938.

John N. Day to be postmaster at Klemme, Iowa, in place of J. N. Day. Incumbent's commission expires June 18, 1938.

Russell G. Mellinger to be postmaster at Oakville, Iowa, in place of R. G. Mellinger. Incumbent's commission expired May 2, 1938.

KENTUCKY

Lois B. Cundiff to be postmaster at Cadiz, Ky., in place of L. B. Cundiff. Incumbent's commission expired May 2, 1938.

LOUISIANA

T. Lucien Ducrest to be postmaster at Broussard, La. Office became Presidential July 1, 1938.

MARYLAND

Thomas B. T. Radcliffe to be postmaster at Cambridge, Md., in place of T. B. T. Radcliffe. Incumbent's commission expired February 10, 1938.

MISSOURI

James E. Ferguson to be postmaster at Williamsville, Mo., in place of J. E. Ferguson. Incumbent's commission expired May 22, 1938.

NEBRASKA

Max C. Jensen to be postmaster at Bridgeport, Nebr., in place of M. C. Jensen. Incumbent's commission expired April 28, 1938.

Hjalmar A. Swanson to be postmaster at Clay Center, Nebr., in place of H. A. Swanson. Incumbent's commission expires June 15, 1938.

Clifford R. Frasier to be postmaster at Gothenburg, Nebr., in place of C. R. Frasier. Incumbent's commission expired April 28, 1938.

Harold C. Menck to be postmaster at Grand Island, Nebr., in place of H. C. Menck. Incumbent's commission expired May 1, 1938.

Hugo Stevens to be postmaster at Kilgore, Nebr., in place of Hugo Stevens. Incumbent's commission expires June 18, 1938.

William Vogt, Jr., to be postmaster at Oakland, Nebr., in place of E. A. Baugh, deceased.

Lula Newman to be postmaster at Wallace, Nebr., in place of Lula Newman. Incumbent's commission expires June 18, 1938.

NEVADA

Roy T. Williams to be postmaster at Minden, Nev., in place of R. T. Williams. Incumbent's commission expired May 29, 1938.

NEW JERSEY

William L. Scheuerman to be postmaster at Basking Ridge, N. J., in place of W. L. Scheuerman. Incumbent's commission expired March 7, 1938.

Philip L. Fellinger to be postmaster at East Orange, N. J., in place of P. L. Fellinger. Incumbent's commission expired June 8, 1938.

John F. Dugan to be postmaster at Garwood, N. J., in place of J. F. Dugan. Incumbent's commission expired April 27, 1938.

James A. Cleary to be postmaster at Lambertville, N. J., in place of J. A. Cleary. Incumbent's commission expired April 27, 1938.

Jane L. Garland to be postmaster at Sea Bright, N. J., in place of J. L. Garland. Incumbent's commission expired March 19, 1938.

NEW YORK

Gerald S. Sweet to be postmaster at Chazy, N. Y., in place of F. W. Junior, deceased.

NORTH CAROLINA

Preston L. Morris to be postmaster at Broadway, N. C., in place of C. B. Rosser, removed.

Jack Barfield to be postmaster at Mount Olive, N. C., in place of Jack Barfield. Incumbent's commission expired March 20, 1938.

OHIO

Thomas H. Rice to be postmaster at New Vienna, Ohio, in place of Ivan Schuler, removed.

Paul R. Clemson to be postmaster at Thornville, Ohio, in place of Stanley Lynn, removed.

OKLAHOMA

Logan E. Lentz to be postmaster at Ames, Okla. Office became Presidential July 1, 1937.

Branson N. Bills to be postmaster at Gotebo, Okla., in place of Dean Penn, removed.

Kid H. Warren to be postmaster at Shawnee, Okla., in place of K. H. Warren. Incumbent's commission expired May 29, 1938.

OREGON

Ermel H. Hosley to be postmaster at Chiloquin, Oreg., in place of J. Q. Buell, resigned.

PENNSYLVANIA

Joseph D. Plumer to be postmaster at Franklin, Pa., in place of J. L. Callan, removed.

Robert E. Spancake to be postmaster at Ringtown, Pa., in place of P. A. Schmidt, removed.

Otis C. Quinby to be postmaster at Springboro, Pa., in place of J. L. Kramer, removed.

Robert D. Fister to be postmaster at Shillington, Pa., in place of F. G. Ketner, deceased.

SOUTH CAROLINA

Lillie F. Beard to be postmaster at Langley, S. C., in place of C. N. Jones, removed.

TEXAS

Fountain Pitts Shrader to be postmaster at Frisco, Tex., in place of D. B. Shrader, deceased.

William G. Fuchs to be postmaster at Thrall, Tex., in place of John Krieg, removed.

VIRGINIA

William H. Smith, Jr., to be postmaster at Charlotte Court House, Va., in place of C. M. Hutcheson, deceased.

John W. Wright to be postmaster at Roanoke, Va., in place of M. S. Battle, resigned.

WEST VIRGINIA

Maurice L. Richmond to be postmaster at Barboursville, W. Va., in place of M. L. Richmond. Incumbent's commission expired April 6, 1938.

WISCONSIN

Edward Snoeyenbos to be postmaster at Hammond, Wis., in place of Edward Snoeyenbos. Incumbent's commission expires June 15, 1938.

Jesse Theodore Simons to be postmaster at Hixton, Wis., in place of M. N. Duxbury, deceased.

Simon Skroch to be postmaster at Independence, Wis., in place of Simon Skroch. Incumbent's commission expires June 12, 1938.

William S. Casey to be postmaster at Knapp, Wis., in place of W. S. Casey. Incumbent's commision expires June 18, 1938.

Gaylord T. Thompson to be postmaster at Mercer, Wis., in place of G. T. Thompson. Incumbent's commission expired May 30, 1938.

Oscar M. Rickard to be postmaster at Merrillan, Wis., in place of O. M. Richard. Incumbent's commission expires June 12, 1938.

Maurice A. Reeves to be postmaster at Pewaukee, Wis., in place of M. A. Reeves. Incumbent's commission expires June 12, 1938.

Gladys M. Suter to be postmaster at Plum City, Wis., in place of G. M. Suter. Incumbent's commission expired May 15, 1938.

Curtis R. Hanson to be postmaster at Scandinavia, Wis., in place of C. R. Hanson. Incumbent's commission expires June 12, 1938.

Louis G. Kaye to be postmaster at Westboro, Wis., in place of L. G. Kaye. Incumbent's commission expires June 15, 1938.

Donald M. Warner to be postmaster at Whitehall, Wis., in place of D. M. Warner. Incumbent's commission expires June 18, 1938.

CONFIRMATIONS

Executive nominations confirmed by the Senate June 8 (legislative day of June 7), 1938

MARSHAL OF THE UNITED STATES COURT FOR CHINA

Gordon Campbell to be marshal of the United States Court for China.

BOARD OF TAX APPEALS

Charles R. Arundell to be a member of the Board of Tax Appeals.

John W. Kern to be a member of the Board of Tax Appeals.

Clarence V. Opper to be a member of the Board of Tax Appeals.

John A. Tyson to be a member of the Board of Tax Appeals.

POSTMASTERS

ALABAMA

William B. Wilder, Andalusia.
Bennett W. Pruett, Anniston.
James G. Brown, Atmore.
Elmer H. Carter, Castleberry.
Madge S. Jefferies, Citronelle.
Ernest D. Manning, Florala.
Herman Pride, Georgiana.
Mim C. Farish, Grove Hill.
Julian J. Chambliss, Hurtsboro.
S. Adeline Laster, Irondale.
William C. Stearns, Lanett.
Roy J. Ellison, Loxley.
William M. Moore, Luverne.
Benjamin F. Beesley, McKenzie.
S. Evelyn Selman, Mentone.
Jesse B. Adams, Ozark.
Herman Grimes, Pine Apple.

Lorenzo D. McCrary, Prattville.
Ernest L. Stough, Jr., Red Level.
Harry J. Wilters, Robertsdale.
Leslie D. Strother, Shawmut.
James H. Dunlap, Siluria.
Bettie T. Forster, Thomasville.
John F. Harmon, Troy.
Ferne W. Rainer, Union Springs.
Joe H. Kerr, Wedowee.
Benjamin L. Edmonds, West Blocton.
William H. McDonough, Whistler.

ARIZONA

Charles C. Stemmer, Cottonwood.
Robert E. Briscoe, Fort Defiance.
Joe H. Little, Glendale.
Waltice B. Ham, Somerton.
Charles J. Moody, Superior.

ARKANSAS

Fred W. Lemay, Alicia.
David G. Lamb, Arkadelphia.
Mary H. Morgan, Ashdown.
John E. Darr, Atkins.
Otis H. Parham, Bald Knob.
Lee Roy Jordan, Batesville.
Nannie L. Connevey, Bauxite.
Thomas B. Gatling, Bearden.
Earl T. Estes, Calico Rock.
Laura Clements, Cherry Valley.
W. Ernest King, Clarksville.
Joseph T. Whillock, Clinton.
Herbert D. Russell, Conway.
Frank B. Ortman, Cotter.
William I. Fish, Dumas.
Lucy F. Harris, Earl.
Ambrose D. McDaniel, Forrest City.
Lewis Friedman, Fort Smith.
Lillie Q. Lowe, Gillett.
John W. Paschall, Gould.
Charlie O. Sawyer, Hamburg.
J. Neil Cooper, Hoxie.
Fred M. Johnson, Huttig.
J. Dot Fortenberry, Imboden.
Harmon T. Griffin, Lake City.
Ben W. Walker, Lewisville.
Eethel L. Nall, Lockersburg.
Sue M. Brown, Luxora.
Elmer McHaney, Marmaduke.
Wyeth S. Daniel, Marshall.
Guy Stephenson, Monticello.
Claude M. Farish, Morrilton.
Jennings Bryan Lancaster, Mountain View.
Henry M. Landers, Murfreesboro.
Byron C. Pascoe, Newark.
William F. Elsken, Paris.
Paul Janes, Ravenden.
Martha Campbell, Rector.
Jesse T. Howard, Smithville.
Fred W. Knickerbocker, Sparkman.
Charles K. Coe, Tuckerman.
Theo Money, Waldron.
Charles C. Snapp, Walnut Ridge.
Simon O. Norris, Williford.

CALIFORNIA

Mary Ella Dow, Anderson.
Carl W. Brenner, Buena Park.
Paul O. Martin, Burbank.
John G. Carroll, Calexico.
Edgar G. Eckels, Chino.
Frank J. Roche, Concord.
Frank Emerson, Corona.
Norris Mellott, Costa Mesa.
Mae A. Kibler, Del Mar.
William Francis Richmond, El Centro.
Terrell L. Rush, Elsinore.
L. Belle Morgan, Encanto.
Faith I. Wyckoff, Firebaugh.
Charles H. Hood, Fresno.
Nelson C. Fowler, Kelseyville.
Howard Edwin Cooper, La Canada.
Ethel M. Strong, Lake Arrowhead.
Percy H. Millberry, Lakeport.
Thomas F. Helm, Lakeside.
Frederick N. Blanchard, Laton.
Floyd L. Turner, Lower Lake.
Anthony F. Sonka, Lemongrove.
George Edgar Archer, Maywood.
Miriam I. Paine, Mariposa.
Clarence McCord, Olive View.
Joseph A. Dinkler, Pacoima.
Edith B. Smith, Patton.
James B. Stone, Redlands.
Agnes McCausland, Ripon.
Joseph H. Allen, Riverside.
Bernice M. Ayer, San Clemente.
Michael E. Neish, San Leandro.
Thomas M. Day, San Rafael.
Michael L. Collins, Seal Beach.
Earl P. Thurston, Ukiah.
Orton P. Brady, Upland.
Roy Bucknell, Upper Lake.
Arden D. Lawhead, Vista.

COLORADO

Walter E. Rogers, Berthoud.
Percy B. Paddock, Boulder.
George M. Griffin, Brighton.
Patrick H. Kastler, Brush.
Mary E. Vogt, Burlington.
Flora G. Hier, Castle Rock.
Harold W. Riffle, Eckley.
James E. Adams, Englewood.
Agnes M. Padan, Fort Logan.
Carl E. Wagner, Fort Morgan.
Tom C. Crist, Haxtum.
William H. Rhoades, Jr., Kit Carson.
Michael F. O'Day, Lafayette.
Angeline B. Adkisson, Longmont.
Elmer M. Ivers, Loveland.
James A. Collins, Minturn.
Charles F. Horn, Pueblo.
Lewis Hollenbeck, Salida.
E. Velma Logan, Stratton.
Roxie R. Broad, Wheat Ridge.

CONNECTICUT

Michael J. Cook, Ansonia.
William M. O'Dwyer, Fairfield.
Charles F. Schaefer, Greens Farms.
Ralph W. Bull, Kent.
Joseph J. O'Loughlin, Lakeville.
Elizabeth J. Carris, Stepney Depot.
Catherine S. Barnett, Suffield.
Clarence H. Davenport, Washington.
Albert E. Lennox, Windsor.

DELAWARE

Elmer Layfield, Dagsboro.
George I. Bendler, Delaware City.
William O. Martin, Lewes.
Edwin E. Shallcross, Middletown.
John E. Mayhew, Milford.
Florence H. Carey, Milton.
Cyrus E. Rittenhouse, Newark.
Joseph C. Slack, Newport.
Joseph H. Cox, Seaford.
Edna E. Conner, Townsend.
William H. Draper, Wyoming.

FLORIDA

Katherine S. Grey, Atlantic Beach.
Marshall C. Pitts, Okeechobee.

John Justin Schumann, Vero Beach.
Jerald W. Farr, Wauchula.

GEORGIA

Cleo H. Price, Adairsville.
George B. McIntyre, Ailey.
Roy R. Powell, Arlington.
Burgess Y. Dickey, Calhoun.
Robert R. Lee, Dallas.
William M. Denton, Dalton.
Nathaniel M. Hawley, Douglasville.
Verne J. Pickren, Folkston.
L'Bertie Rushing, Glennville.
Joseph T. Buhannon, Grantville.
Herman C. Fincher, La Grange.
Olin W. Patterson, Lumpkin.
George Welby Griffith, Manchester.
W. Brantley Daniel, Millen.
Hattie C. Williams, Pinehurst.
Mary H. Campbell, Plains.
William E. Wimberly, Rome.
James S. Alsobrook, Rossville.
Charles D. Bruce, Sea Island Beach.
Ferman F. Chapman, Summerville.
Nettie H. Woolard, Sylvester.
Cecil F. Aultman, Warwick.
DeWitt P. Trulock, Whigham.

HAWAII

James D. Lewis, Jr., Kaunakakai.
Kenichi Tomita, Puunene.

IDAHO

Thomas B. Hargis, Ashton.
Angus G. David, Bovill.
Joseph W. Tyler, Emmett.
Lowell H. Merriam, Grace.
Benjamin F. Shaw, Grangeville.
Edward T. Gilroy, Kooskia.
Fred Kling, Lewiston.
John B. Cato, Meridian.
Glenn H. Sanders, Moscow.
Clellan W. Bentley, Mullan.
Ambrose H. McGuire, Pocatello.
Henry G. Reiniger, Rathdrum.
Daisy P. Moody, Sandpoint.
Rose J. Hamacher, Spirit Lake.
Charles H. Hoag, Worley.

ILLINOIS

Gilbert C. Jones, Albion.
Joseph L. Lampert, Alton.
Harry C. Stephens, Ashley.
Samuel J. Schuman, Astoria.
George A. McFarland, Avon.
Emma J. Zinschlag, Beckemeyer.
Louise Rump, Beecher.
Louie E. Dixon, Biggsville.
Luella C. Biggs, Blandinsville.
Thomas Bernard Meehan, Bluffs.
Leslie O. Cain, Bowen.
Alice Dillon, Braidwood.
Erwin J. Mahlandt, Breese.
Ruth M. McElvain, Broughton.
Marvin G. Diveley, Brownstown.
Charles A. Etherton, Carbondale.
Clyde P. Stone, Carmi.
Joseph I. Kvidera, Cary.
Harvey F. Doerge, Chester.
Martin M. Dalrymple, Chrisman.
Dwight C. Bacon, Christopher.
Clason W. Black, Clay City.
John R. Reynolds, Colchester.
Charles J. Schneider, Columbia.
Harry O. Given, Crossville.
Vera E. Burrell, Cuba.
Budd L. Kellogg, Downers Grove.
Andrew J. Paul, Dupo.
Lee C. Vinyard, East Alton.
Eugene P. Kline, East St. Louis.
Fred A. McCarty, Edinburg.
Grover C. Norris, Effingham.
Joseph Kreeger, Elgin.
Edmund J. Coveny, Elizabeth.
Charles R. Bowers, Elmwood.
John J. McGuire, El Paso.
Eulalie E. Mase, Forreston.
George E. Brown, Franklin.
Edwin J. Heiligenstein, Freeburg.
Lawrence J. Kiernan, Genoa.
Ernest R. Lightbody, Glasford.
Roy R. Pattison, Godfrey.
Charles G. Sowell, Granite City.
William I. Tyler, Granville.
Arthur M. Hetherington, Harrisburg.
Melvin R. Begun, Hebron.
Orville W. Lyerla, Herrin.
Arthur H. Bartlett, Hillsboro.
Lyle O. Kistler, Joy.
Robert J. Wilson, Kewanee.
Richard L. Lauwerens, Kincaid.
Charles W. Farley, La Grange.
George H. Wales, Lanark.
Mary Reardon, La Salle.
Joseph E. Fitzgerald, Lockport.
John W. Hines, Lovington.
George K. Brenner, Madison.
Daisy Lindsey, Mahomet.
Nicholas A. Schilling, Mascoutah.
John A. Peters, Mason City.
Clyde E. Wilson, Melvin.
Hazel E. Davis, Minier.
Margaret M. Maue, Mokena.
Emil J. Johnson, Moline.
Lawrence E. Hodges, Mount Prospect.
Walter D. Wacaser, Mount Pulaski.
William Raymond Grigg, Mount Vernon.
Thomas J. Studley, Neponset.
John L. Mead, New Boston.
Paul B. Laugel, Newton.
Henry B. Shroyer, New Windsor.
George G. Martin, Noble.
William P. Carlton, Oblong.
Ralph Van Matre, Olney.
William Kehe, Jr., Palatine.
Walter Hill, Pana.
Michael E. Sullivan, Park Ridge.
Paul R. Smoot, Petersburg.
Martin J. Naylon, Polo.
Marguerite A. Lamb, Port Byron.
Harlow B. Brown, Princeton.
Homer J. Swope, Quincy.
Mary Convery, Raymond.
Ben W. Sharp, Reynolds.
Lorenz M. Lies, Riverside.
Floyd J. Tilton, Rochelle.
Robert E. Harper, Rock Falls.
Joseph L. Molidor, Round Lake.
Margaret Hawley, Sandoval.
Helen G. McCarthy, St. Charles.
Charles C. Wheeler, Sandwich.
Joseph M. Ward, Sterling.
Marie E. Holquist, Stillman Valley.
Marcus M. Wilber, Sorento.
James Wheeler Davis, Troy.
Grove Harrison, Viola.
Armand Rossi, Wilsonville.
Zeno G. Stoecklin, Wood River.
Croy Howard, Xenia.
Frances T. Johnson, Yates City.
Mervin N. Beecher, Yorkville.

INDIANA

Neil D. Thompson, Argos.
J. Russell Byrd, Bloomfield.
Richard A. Conn, Brook.
Edward M. Cripe, Camden.
Lowell B. Pontius, Claypool.
Grover C. Rainbolt, Corydon.
Oscar J. Sauerman, Crown Point.
Fletcher T. Strang, Culver.
Joseph J. Hartman, Earl Park.
Frank S. Dubczak, East Chicago.
James E. Freeman, Ellettsville.
Henry M. Mayer, Evansville.
Chester Wagoner, Flora.
Leo McGrath, Fowler.
Orace O. Welden, Francesville.
Charles H. Apple, French Lick.
William J. O'Donnell, Gary.
Orville Martin, Grand View.
Pearl E. Barnes, Hamlet.
John Victor Gidley, Hebron.
Joseph E. Mellon, Hobart.
Ivan Conder, Jasonville.
Carroll W. Cannon, Knox.
Ira J. Dye, Kouts.
Thomas S. Stephenson, Leavenworth.
Paul E. Byrum, Milltown.
Frank Chastain, Mitchell.
John H. Smith, Monon.
Charles A. Good, Monterey.
Galen Benjamin, Monticello.
George H. Clarkson, Morocco.
Albert M. Leis, Mount Saint Francis.
William S. Darneal, New Albany.
Charles A. Webster, North Vernon.
Harold C. Atkinson, Oxford.
John F. Boyle, San Pierre.
Harry E. Patterson, Thorntown.
James C. Talbott, Veterans' Administration Hospital.
Henry Backes, Washington.
Oscar M. Shively, Yorktown.

KANSAS

George E. Broadie, Ashland.
Sophia Kesselring, Atwood.
Irvin T. Hocker, Baxter Springs.
Charles Ward Smull, Bird City.
Orville E. Heath, Chetopa.
John J. Menard, Clyde.
Carl G. Eddy, Colby.
Eyman Phebus, Coldwater.
Nell C. Graves, Columbus.
Page Manley, Elk City.
Charles F. Mellenbruch, Fairview.
Elbert Holcomb, Fredonia.
Max Y. Sawyer, Galena.
Homer I. Shaw, Galesburg.
Charles H. Ryan, Girard.
Henry A. Mason, Gypsum.
Joseph B. Basgall, Hays.
David E. Walsh, Herndon.
William A. B. Murray, Holyrood.
William A. Harris, Le Roy.
Francis G. Burford, Longton.
Elizabeth Mansfield, Lucas.
Pearl W. Smith, Meade.
Robert E. Deveney, Meriden.
Grace E. Wilson, Milford.
Eunice E. Buche, Miltonvale.
Charles H. Wilson, Moline.
Mary M. Browne, Norton.
Charles Huffman, Norwich.
Noah D. Zeigler, Oakley.
John C. Carpenter, Oswego.
Edison Brack, Otis.
Ralph L. Hinnen, Potwin.
Vie Peacock, Protection.
Robert R. Morgan, Rexford.
Leigh D. Dowling, St. Francis.
Walter S. English, Scandia.
Esta S. Riseley, Stockton.
Margaret A. Schafer, Vermillion.
Paul L. Turgeon, Wilson.
James L. Morrissey, Woodston.

LOUISIANA

Winnie H. Arras, Gramercy.
Maurice Primeaux, Kaplan.
Oliver Dufour, Marrero.
Mary H. David, Pineville.
Isidore A. Currault, Westwego.
Robert E. Loudon, Zachary.

MAINE

Nelson A. Harnden, Belgrade Lakes.
Lloyd V. Cookson, Hartland.
Cyril Cyr, Jackman Station.
James A. McDonald, Machias.
Lillian L. Guptill, Newcastle.
Mary E. Donnelly, North Vassalboro.
Milton Edes, Sangerville.
Frank R. Madden, Skowhegan.

MARYLAND

William A. Strohm, Annapolis.
William B. Usilton, Chestertown.
Robert Conroy, Forest Glen.
Charles A. Bechtold, Fort George G. Meade.
Lillie M. Pierce, Glyndon.
Elizabeth H. S. Boss, Laurel.
Henry J. Paul, Linthicum Heights.
William F. Keys, Mount Rainier.
John E. Morris, Princess Anne.
Joseph Wilmer Baker, Union Bridge.

MASSACHUSETTS

George F. Cramer, Amherst.
Lauri O. Kauppinen, Baldwinsville.
John E. Mansfield, Bedford.
Henry J. Cottrell, Beverly.
Frances A. Rogers, Billerica.
Arthur A. Hendrick, Brockton.
John R. McManus, Concord.
Raymond W. Comiskey, Dover.
John J. Quinn, Jr., East Douglas.
Ellen M. O'Connor, East Taunton.
Edward C. Pelissier, Hadley.
Thomas V. Sweeney, Harding.
Mary E. Sheehan, Hatfield.
Josephine R. McLaughlin, Hathorne.
Catherine A. McCasland, Hinsdale.
Charles A. Cronin, Lawrence.
Thomas A. Wilkinson, Lynn.
Gladys V. Crane, Merrimac.
James F. McClusky, Middleboro.
James Sheehan, Millis.
William T. Martin, Monterey.
William F. Leonard, Nantasket Beach.
Ephrem J. Dion, Northbridge.
John E. Harrington, North Chelmsford.
Lawrence D. Quinlan, Northfield.
James B. Logan, North Wilbraham.
Alexander John MacQuade, Osterville.
Elizabeth C. Hall, Point Independence.
James G. Cassidy, Sheffield.
Charles A. McCarthy, Shirley.
George M. Lynch, Somerset.
William F. O'Toole, South Barre.
Alice C. Redlon, South Duxbury.
William J. Farley, South Hanson.
John F. Malone, Southwick.
Harvey E. Lenon, Swansea.

Arthur J. Fairgrieve, Tewksbury.
John J. Kent, Jr., West Bridgewater.
Margaret E. Coughlin, West Concord.
John H. Fletcher, Westford.
Raymond F. Gurney, Wilbraham.
Thaddeus F. Webber, Winchendon.
Philip J. Gallagher, Woburn.

MINNESOTA

Dean M. Alderman, Grey Eagle.
Arthur S. Peterson, Houston.
Lee L. Champlin, Mankato.
Chester J. Gay, Moose Lake.
Henry A. C. Saggau, Ceylon.
Gilbert P. Finnegan, Eveleth.
Catherine C. Burns, Glenwood.
Alphonse F. Scheibel, Mountain Lake.
Hjalmer A. Johnson, Soudan.
Teresa L. Wolf, Staples.
Paul J. Arndt, Stillwater.
Daniel M. Coughlin, Waseca.
Ernest F. Schroeder, Wells.

MISSISSIPPI

Lewis F. Henry, Carthage.
Grace B. McIntosh, Collins.
Ida F. Thompson, Dlo.
Brooksie J. Holt, Duncan.
Emma D. Trim, Hermanville.
Ida E. Ormond, Forest.
Frances G. Wimberly, Jonestown.
Florence Churchwell, Leakesville.
William M. Alexander, Moss Point.
Clemmie A. McCoy, New Augusta.
William C. Mabry, Newton.
Carson Hughes, Oakland.
Lewis M. McClure, Ocean Springs.
Robert A. Dean, Okolona.
Viva H. McInnis, Rosedale.
James F. Howry, Sardis.
Hermine D. Lamar, Senatobia.
Ossie J. Page, Sumrall.
Alfis F. Holcomb, Waynesboro.
Beall A. Brock, West.
Buren Broadus, Wiggins.

MISSOURI

Sadie G. Morehead, Milan.

NEVADA

Anne M. Holcomb, Battle Mountain.
Pauline Hjul Hurley, Eureka.
Lem S. Allen, Fallon.
Frank F. Garside, Las Vegas.

NORTH CAROLINA

John F. Lynch, Erwin.
William S. Harris, Mebane.
John A. Williams, Oxford.
Basil D. Barr, West Jefferson.
Thomas D. Boswell, Yanceyville.

NORTH DAKOTA

William E. Ravely, Edgeley.
George W. McIntyre, Jr., Grafton.
Max A. Wipperman, Hankinson.
Richard J. Leahy, McHenry.
Wesley P. Josewski, Maxbass.
Anthony Hentges, Michigan.
Caroline Lipinski, Minto.
Louis J. Allmaras, New Rockford.
Charles K. Otto, Valley City.
Arthur W. Hendrickson, Walcott.
Coral R. Campion, Willow City.
Andrew D. Cochrane, York.

SOUTH DAKOTA

John Evans, Agar.
George E. Hagen, Armour.
Mary A. Hornstra, Avon.
George B. Brown, Clark.
Edward P. Amundson, Colton.
Harm P. Temple, Davis.
Lulu A. Turner, Ethan.
Edward L. Fisher, Eureka.
Mary A. Ralph, Henry.
Harold L. Fetherhuff, Herreid.
Edwin H. Bruemmer, Huron.
Clarence W. Richards, Kimball.
Ella M. Ottum, Mellette.
Josephine C. Eggerling, Orient.
George L. Egan, Parker.
Cleveland F. Brooks, Platte.
Ena C. Erling, Raymond.
Fae Thompson, St. Lawrence.
Philip A. McMahon, Salem.
James Gaynor, Springfield.
William P. Smith, Stickney.
Orville U. Melby, Summit.
Joseph S. Petrik, Tabor.
Oscar I. Ohman, Toronto.
Kathryn M. McCoy, Tulare.
Matt McCormick, Tyndall.

TENNESSEE

Mabel W. Hughes, Arlington.
Cyril W. Jones, Athens.
Donald B. Todd, Etowah.
Etoile Johnson, Doyle.
Pearl A. Russell, Ducktown.
Vola W. Mansfield, Dunlap.
LeRoy J. Eldredge, Hixson.
Albert A. Trusler, Jonesboro.
Thomas D. Walker, Kerrville.
Burleigh L. Day, Pressmen's Home.
Irene M. Cheairs, Spring Hill.
Ocie C. Hawkins, Stanton.
Clarence E. Kilgore, Tracy City.

TEXAS

Marguerite A. Mullen, Alice.
Charles Y. Shultz, Alvarado.
Andrew J. McDonald, Alvord.
Winnette D. DeGrassi, Amarillo.
Nat Shick, Big Spring.
Lee Brown, Blanco.
Paul V. Bryant, Canadian.
James R. Eanes, Comanche.
John M. O. Littlefield, Crosbyton.
Alva Spencer, Crowell.
Opal Farris, Daisetta.
Jack M. Wade, Dalhart.
Willie N. Cargill, Eddy.
A. Warren Dunn, Fort Stockton.
Sant M. Perry, Frankston.
Stephen S. Perry, Freeport.
Robert A. Lyons, Jr., Galveston.
John M. Sharpe, Georgetown.
William E. Porter, Glen Rose.
Tom S. Kent, Jr., Grapeland.
Allen A. Collet, Handley.
Leonard B. Baldwin, Huntsville.
Charles R. Conley, Iredell.
Henry W. Hoffer, Kaufman.
Charles D. Grady, Keene.
Gober L. Gibson, Kerrville.
Clyde E. Perkins, Kirkland.
George T. Elliott, Kress.
Russell B. Cope, Loraine.
Edward I. Pruett, Marfa.
Perry Hartgraves, Menard.
Glad C. Campbell, Mertzon.
Myrtle M. Hatch, Mission.
Oland A. Walls, Naples.
Effie Rasmussen, Needville.

William W. Spear, Nixon.
William A. Gillespie, Overton.
Benjamin F. Hobson, Paducah.
John W. Waide, Paint Rock.
Morris W. Collie, Pecos.
Mamie Milam, Prairie View.
Charles G. Conley, Quanah.
Otis T. Kellam, Robstown.
Claude F. Norman, Rule.
Ora L. Griggs, Sanatorium.
Ferdinand L. Hersik, Schulenburg.
Susie A. Cannon, Shelbyville.
Clarence Carter, Somerville.
Willie R. Goodwin, Stinnett.
Hugh D. Burleson, Streetman.
Charles H. Grounds, Talpa.
Thomas A. Bynum, Texas City.
Emory S. Sell, Texline.
Madeline G. McClellan, Waller.
Bobbie Avary, Wickett.
Mollie S. Berryman, Willis.
Paul E. Jette, Wink.
Lou A. Sloma, Yorktown.
Emilie K. Dew, Ysleta.

VERMONT

Ward L. Lyons, Bennington.
Earle J. Rogers, Cabot.
Hollis S. Johnson, Castleton.
Rutherford D. Pfenning, Forest Dale.
Frank J. Donahue, Middlebury.
Patrick J. Candon, Pittsford.
Mary F. Brown, Readsboro.
Herbert B. Butler, St. Albans.
Rosa M. Stewart, Tunbridge.
Timothy J. Murphy, Windsor.

HOUSE OF REPRESENTATIVES

WEDNESDAY, JUNE 8, 1938

The House met at 11 o'clock a. m.

The Chaplain, Rev. James Shera Montgomery, D. D., offered the following prayer:

Have mercy upon us, O God; accord unto us Thy loving kindness. According to the multitude of Thy tender mercies, blot out our transgressions. Create in us all clean hearts and renew within us a right spirit. Be with any who may be of a troubled heart or necessitous, or whose better natures tremble and are afraid. Let Thy arms be unto us as our earthly parents', sustaining and helping us as we walk the crowded ways of life. In our varied experiences, O Lord, with their breaking wonders and disappointments, may we labor steadily on in the fields of faith, bringing forth fruit that shall honor our generation. In our country's ebb and flow, may it always disclose the things that shall live and never die. In the name of our Redeemer. Amen.

The Journal of the proceedings of yesterday was read and approved.

MESSAGE FROM THE SENATE

A message from the Senate, by Mr. Frazier, its legislative clerk, announced that the Senate had passed without amendment bills and joint resolutions of the House of the following titles:

H. R. 146. An act to require contractors on public-building projects to name their subcontractors, material men, and supply men, and for other purposes;

H. R. 1252. An act for the relief of Ellen Kline;

H. R. 1476. An act for the relief of Mrs. W. E. Bouchey;

H. R. 1737. An act for the relief of Marie Frantzen McDonald;

H. R. 1744. An act for the relief of Grant H. Pearson, G. W. Pearson, John C. Rumohr, and Wallace Anderson;

H. R. 2347. An act for the relief of Drs. M. H. DePass and John E. Maines, Jr., and the Alachua County Hospital;

H. R. 3313. An act for the relief of William A. Fleek;

H. R. 4033. An act for the relief of Antonio Masci;

H. R. 4232. An act for the relief of Barber-Hoppen Corporation;

H. R. 4304. An act for the relief of Hugh O'Farrell and the estate of Thomas Gaffney;

H. R. 4668. An act for the relief of James Shimkunas;

H. R. 5166. An act to relinquish the title or interest of the United States in certain lands in Houston (formerly Dale) County, Ala., in favor of Jesse G. Whitfield or other lawful owners thereof;

H. R. 5592. An act to amend an act entitled "An act extending the homestead laws and providing for right-of-way for railroads in the District of Alaska, and for other purposes", approved May 14, 1898 (30 Stat. 409, 414);

H. R. 5904. An act for the relief of L. P. McGown;

H. R. 5957. An act for the relief of LeRoy W Henry;

H. R. 6243. An act to authorize a survey of the old Indian trail and the highway known as "Oglethorpe Trail" with a view of constructing a national roadway on this route to be known as "The Oglethorpe National Trail and Parkway";

H. R. 6404. An act for the relief of Martin Bevilacque;

H. R. 6508. An act for the relief of Gladys Legrow.

H. R. 6646 An act for the relief of Dr. A. J. Cottrell;

H. R. 6689. An act for the relief of George Rendell, Alice Rendell, and Mabel Rendell;

H. R. 6847. An act for the relief of the Berkeley County Hospital and Dr J. N. Walsh;

H. R. 6936. An act for the relief of Joseph McDonnell;

H. R. 6950. An act for the relief of Andrew J. McGarraghy;

H. R. 7040. An act for the relief of Forest Lykins;

H. R. 7421. An act for the relief of E. D. Frye;

H. R. 7548. An act for the relief of J. Lafe Davis and the estate of Mrs. J. Lafe Davis;

H. R. 7590. An act to quiet title and possession to certain islands in the Tennessee River in the counties of Colbert and Lauderdale, Ala.;

H. R. 7639. An act for the relief of Al D. Romine and Ann Romine;

H. R. 7734. An act conferring jurisdiction upon the United States District Court for the Southern District of Ohio to hear, determine, and render judgment upon the claim of A. L. Eldridge;

H. R. 7761. An act for the relief of Sibbald Smith;

H. R. 7817. An act for the relief of C. G. Bretting Manufacturing Co.;

H. R. 7834. An act to amend the act entitled "An act to provide compensation for disability or death resulting from injuries to employees in certain employments in the District of Columbia, and for other purposes";

H. R. 7855. An act for the relief of Frieda White;

H. R. 7880. An act to amend the Veterans Regulation No. 10 pertaining to "line of duty" for peacetime veterans, their widows, and dependents, and for other purposes;

H. R. 7933. An act to facilitate the control of soil erosion and/or flood damage originating upon lands within the exterior boundaries of the San Bernardino and Cleveland National Forests in Riverside County, Calif.;

H. R. 7998. An act for the relief of the First National Bank & Trust Co. of Kalamazoo, Kalamazoo, Mich.;

H. R. 8134. An act to quiet title and possession to certain lands in the Tennessee River in the counties of Colbert and Lauderdale, Ala.;

H. R. 8192. An act for the relief of Herbert Joseph Dawson;

H. R. 8193. An act for the relief of the Long Bell Lumber Co.;

H. R. 8252. An act to quiet title and possession to a certain island in the Tennessee River in the county of Lauderdale, Ala.;

H. R. 8376. An act for the relief of James D. Larry, Sr.;

H. R. 8543. An act for the relief of Earl J. Lipscomb;